

CITY OF MADISON, ALABAMA
Public Works Contract
Lump Sum Bid

Bid No. COM-15-11

Madison LED Street Lights Project



Pre-Bid Conference: Wednesday, September 7, 2011 @ 10:00 a.m.
Conference Room 130

Bid Opening: September 21, 2011 @ 10:00 a.m.
Conference Room 130

100 Hughes Road
Madison, AL 35758
(256) 772-5600
(256) 772-5649

www.madisonal.gov

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**CITY OF MADISON, ALABAMA
ADVERTISEMENT FOR BIDS
BID NO. COM-15-11**

The City of Madison, Alabama, is soliciting sealed bids for furnishing all labor, materials and equipment, and performing all work necessary for the construction of **City of Madison LED Street Lights Project (removing existing area lights and replacing with new LED area lights for (a) Intergraph Way and Madison Boulevard Intersection (b) Lanier Road and Madison Boulevard Intersection and (c) Zierdt Road and Madison Boulevard Intersection.**

SUBMITTAL DEADLINE: **Sealed Bids must be delivered before 9:45 a.m. on Wednesday, September 21, 2011.** Bids packets must be addressed and delivered to: City of Madison, Purchasing Division of the Finance Department, 100 Hughes Road, Madison, Alabama 35758 **Labeled "Bid #COM-15-11".** Bids must bear original signatures and figures. Submittal deadlines for submission of bids may be adjusted to allow for revisions. **Late bids will be returned to the Bidder unopened.**

PRE-BID CONFERENCE: **Wednesday, September 7, 2011 @ 10:00 a.m. CST, in Conference Room 130** located in the Municipal Complex at 100 Hughes Road, Madison, Alabama. Attendance is highly recommended.

BID OPENING: **Wednesday, September 21, 2011 @ 10:00 a.m. CST, in Conference Room 130** located in the Municipal Complex at 100 Hughes Road, Madison, Alabama. The City reserved the right to waive this attendance requirement.

BID SECURITY BOND: Bid security bond is required posted in an amount equal to five percent (5%) of the bid amount; provided, however, it shall not exceed \$10,000 (only one (1) bid bond is required).

PERFORMANCE BOND: The successful bidder shall be required to furnish a performance bond satisfactory to the City.

PAYMENT BOND: The successful bidder shall be required to furnish a payment bond satisfactory to the City.

INSURANCE: The successful bidder shall be required to furnish certificate of insurance satisfactory to the City.

BID ACCEPTANCE: No bid may be withdrawn for a period of thirty (30) days after the scheduled time for opening bids without the consent of the City of Madison.

REJECTION OF BIDS, WAIVER OF INFORMALITIES: The City of Madison, Alabama, reserves the right to reject any and all bids and to waive any informality.

GOVERNING LAWS AND REGULATIONS: The Contractor shall comply with the Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act, the Anti-kickback Act, and the Contract Work Hours Standards Act (PL-91-54). Bidders will be governed by said law insofar as it is applicable. Not less than the minimum wage scale applying to Madison County shall be paid to all skilled, intermediate and unskilled labor employed under this contract.

The Contractors' attention is called to the Davis Bacon Act requirements.

The advertisement, award, and prosecution of the Contract will be governed by Title 39 of the Alabama Code, as amended by Act No. 225 of the 1997 Regular Session of the Alabama Legislature and by other applicable laws and ordinances, as well as by the terms of the Contract Documents.

The attention of all bidders is called to advertisement requirement immediately after the completion of the contract. The Contractor shall give notice of the completion by an advertisement in a newspaper of general circulation published within the City or county in which the work has been done, for a period of four (4) successive weeks. Contractor must provide the City proof of publication notice made by affidavit of the publisher and a printed copy of the notice published.

ATTENTION TO BIDDERS: The attention of all bidders is called to the requirements and regulations of the U.S. Department of Energy. The projects in this invitation are funded by the U.S. Department of Energy (DOE) Energy Efficiency and Conservation Block Grant.

CERTIFICATE OF DISADVANTAGE BUSINESS ENTERPRISES: The Successful Contractor must complete a certificate of Disadvantage Business Enterprises (BDE) and certify, under penalty of perjury, that he/she or any person associated therewith in the capacity of owner, partner, director or officer or manager intends to comply with the DBE requirements.

CONTRACTOR'S LICENSES AND PERMITS: Contractor's license and permits are required in accordance to State Law governing "General Contractors" as set forth in *Ala. Code* 34-8-1, et seq. No Contract may be awarded to anyone, who does not possess a valid General Contractor's Licenses or Permits nor enter into Contract with a non-resident corporation which has not qualified under State law to do business in the State of Alabama.

NON-COLLUSION BIDDING AFFIDAVIT: A non-collusion bidding affidavit is required which certify the bidder nor any representative of the bidder is a party to or has participated in any agreement or collusion in restraint of freedom of competition with respect to the bid.

NON-DISCRIMINATION: The City of Madison hereby notifies all bidders that the City will affirmatively ensure that small businesses, minority-owned firms, and women's business enterprises afforded full opportunity and consideration when submitting proposals in response to this invitation. The City of Madison will reply on prime Contractors seeking to do business with the City to ensure that small businesses, minority-owned firms and women's enterprises are afforded full opportunity and consideration to participate as a sub-contractor.

The Contractor agrees that in performing the work and services as required herein under this agreement, not to discriminate against any person based on race, color, religion, sex, age or disability.

The City of Madison will not discriminate against any person based on race, color, religion, sex, age or disability.

AMERICANS WITH DISABILITIES ACT: The Contractor must comply fully with the Americans with Disabilities Act and indemnify and hold harmless the City of Madison from all cost, including but not limited to damages as well as attorney's fees and staff time, in any action or proceedings brought alleging a violation of the Americans with Disabilities Act.

CERTIFICATE OF NON-SUSPENSION OR DEBARMENT: A certificate of non-suspension or debarment is required that states the Bidder certifies, by submitting a bid, neither the company nor its principals are presently debarred, suspended, in the process of debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency.

STATEMENT OF EXPERIENCE/QUALIFICATIONS: A statement of experience/qualification must be submit by the Bidder to include a detailed list of **at least five (5) references** (including names of owners, name of project manager and phone number and completion dates) of projects undertaken by the bidder **within the last five (5) years.**

QUESTIONS AND INQUIRIES: All questions and inquiries concerning this Bid should be addressed to marilyni.story@madisonal.gov in the Finance Department, 100 Hughes Road, Madison, AL 35758, telephone number (256) 772-5667, and fax number (256) 772-5649 or you may access our webpage at www.madisonal.gov. Questions received after the deadline, seven (7) days prior to the opening date, will not be answered.

City of Madison, Alabama
Awarding Authority

**SECTION 1.0
NOTICE TO BIDDERS
BID NO. COM-15-11**

Project Name: City of Madison LED Street Lights Project

The work required in this Contract consists of removing existing area lights and replacing with new LED area lights at the following locations:

- (a) Intergraph Way and Madison Boulevard Intersection
- (b) Lanier Road and Madison Boulevard Intersection
- (c) Zierdt Road and Madison Boulevard Intersection

The Contractor to whom this Contract is awarded is to furnish:

- (a) All labor as required by the Contract Documents.
- (b) All equipment as required by the Contract Documents.
- (c) All materials which the plans specify will be installed in the manner they are shown on the detailed drawings or as required by the Engineer.
- (d) **Brand names or equal.** If the Solicitation indicates brand name or “equal” products are acceptable, the Bidder may propose an “equal” product but must be prepared to demonstrate those features that render it equal. Final determination of a product as and “equal” remains with the City. Brand names or equal, catalog numbers, weights, etc., are used to indicate levels of quality only and are not intended to restrict the bidding. If bidding on an item of another brand or manufacturer than specified, your bid should be accompanied by brochures or other pertinent literature giving detailed specifications of the item(s) on which you are bidding. Bids received without sufficient literature to determine equal quality may not be considered. Final determination as to equal quality will be made by the City.
- (e) All roads crossings and/or driveways cut by the Contractor shall be returned to service as soon as possible and replaced or repaired within seven (7) calendar days.
- (f) All major thoroughfares must be repaired the same day as cut. The Contractor shall be responsible for the safety and welfare of the traveling public while installation shall comply in all respects with the Alabama Manual of Uniform Traffic Control Devices and all applicable laws, ordinances and City regulations.

ATTENTION TO BIDDERS: The attention of all bidders is called to the requirements and regulations of the U.S. Department of Energy. The projects in this invitation are funded by the U.S. Department of Energy (DOE) Energy Efficiency and Conservation Block Grant.

Additional terms, if any, City to furnish.

**SECTION 2.0
INVITATION TO BIDS
BID NO. COM-15-11**

The City of Madison, Alabama, is soliciting sealed bids for furnishing all labor, materials and equipment, and performing all work necessary for the construction of **City of Madison LED Street Lights Project (removing existing area lights and replacing with new LED area lights for (a) Intergraph Way and Madison Boulevard Intersection (b) Lanier Road and Madison Boulevard Intersection and (c) Zierdt Road and Madison Boulevard Intersection.**

SUBMITTAL DEADLINE: **Sealed Bids must be delivered before 9:45 a.m. on Wednesday, September 21, 2011.** Bids packets must be addressed and delivered to: City of Madison, Purchasing Division of the Finance Department, 100 Hughes Road, Madison, Alabama 35758 **Labeled "Bid #COM-15-11".** Bids must bear original signatures and figures. Submittal deadlines for submission of bids may be adjusted to allow for revisions. Late bids will be returned to the Bidder unopened.

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PERFORMANCE BOND: The successful bidder shall be required to furnish a performance bond satisfactory to the City.

PAYMENT BOND: The successful bidder shall be required to furnish a payment bond satisfactory to the City.

INSURANCE: The successful bidder shall be required to furnish certificate of insurance satisfactory to the City.

BID ACCEPTANCE: No bid may be withdrawn for a period of thirty (30) days after the scheduled time for opening bids without the consent of the City of Madison.

REJECTION OF BIDS, WAIVER OF INFORMALITIES: The City of Madison, Alabama, reserves the right to reject any and all bids and to waive any informality.

GOVERNING LAWS AND REGULATIONS: The Contractor shall comply with the Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act, the Anti-kickback Act, and the Contract Work Hours Standards Act (PL-91-54). Bidders will be governed by said law insofar as it is applicable. Not less than the minimum wage scale applying to Madison County shall be paid to all skilled, intermediate and unskilled labor employed under this contract.

The Contractors' attention is called to the Davis Bacon Act requirements.

The advertisement, award, and prosecution of the Contract will be governed by Title 39 of the Alabama Code, as amended by Act No. 225 of the 1997 Regular Session of the Alabama Legislature and by other applicable laws and ordinances, as well as by the terms of the Contract Documents.

The attention of all bidders is called to advertisement requirement immediately after the completion of the contract. The Contractor shall give notice of the completion by an advertisement in a newspaper of general circulation published within the City or county in which the work has been done, for a period of four (4) successive weeks. Contractor must provide the City proof of publication notice made by affidavit of the publisher and a printed copy of the notice published.

ATTENTION TO BIDDERS: The attention of all bidders is called to the requirements and regulations of the U.S. Department of Energy. The projects in this invitation are funded by the U.S. Department of Energy (DOE) Energy Efficiency and Conservation Block Grant.

CERTIFICATE OF DISADVANTAGE BUSINESS ENTERPRISES: The Successful Contractor must complete a certificate of Disadvantage Business Enterprises (BDE) and certify, under penalty of perjury, that he/she or any person associated therewith in the capacity of owner, partner, director or officer or manager intends to comply with the DBE requirements.

CONTRACTOR'S LICENSES AND PERMITS: Contractor's license and permits are required in accordance to State Law governing "General Contractors" as set forth in *Ala. Code* 34-8-1, et seq. No Contract may be awarded to anyone, who does not possess a valid General Contractor's Licenses or Permits nor enter into Contract with a non-resident corporation which has not qualified under State law to do business in the State of Alabama.

NON-COLLUSION BIDDING AFFIDAVIT: A non-collusion bidding affidavit is required which certify the bidder nor any representative of the bidder is a party to or has participated in any agreement or collusion in restraint of freedom of competition with respect to the bid.

NON-DISCRIMINATION: The City of Madison hereby notifies all bidders that the City will affirmatively ensure that small businesses, minority-owned firms, and women's business enterprises afforded full opportunity and consideration when submitting proposals in response to this invitation. The City of Madison will reply on prime Contractors seeking to do business with the City to ensure that small businesses, minority-owned firms and women's enterprises are afforded full opportunity and consideration to participate as a sub-contractor.

The Contractor agrees that in performing the work and services as required herein under this agreement, not to discriminate against any person based on race, color, religion, sex, age or disability.

The City of Madison will not discriminate against any person based on race, color, religion, sex, age or disability.

AMERICANS WITH DISABILITIES ACT: The Contractor must comply fully with the Americans with Disabilities Act and indemnify and hold harmless the City of Madison from all cost, including but not limited to damages as well as attorney's fees and staff time, in any action or proceedings brought alleging a violation of the Americans with Disabilities Act.

CERTIFICATE OF NON-SUSPENSION OR DEBARMENT: A certificate of non-suspension or debarment is required that states the Bidder certifies, by submitting a bid, neither the company nor its principals are presently debarred, suspended, in the process of debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency.

STATEMENT OF EXPERIENCE/QUALIFICATIONS: A statement of experience/qualification must be submit by the Bidder to include a detailed list of **at least five (5) references** (including names of owners, name of project manager and phone number and completion dates) of projects undertaken by the bidder **within the last five (5) years.**

QUESTIONS AND INQUIRIES: All questions and inquiries concerning this Bid should be addressed to marilyni.story@madisonal.gov in the Finance Department, 100 Hughes Road, Madison, AL 35758, telephone number (256) 772-5667, and fax number (256) 772-5649 or you may access our webpage at www.madisonal.gov. Questions received after the deadline, seven (7) days prior to the opening date, will not be answered.

City of Madison, Alabama
Awarding Authority

SECTION 3.0
INSTRUCTIONS TO BIDDERS
BID NO. COM-15-11

- 3.1 **Addendum.** Receipt of an Addendum should be acknowledged in the space provided by the Proposal section of the bid document and returned only when it is required of the Bidder to "Submit with Proposal" as part of the bid document .
- 3.2 **Availability of Funds.** All contracts are bid with intention of awarding a contract as a result of the Bid. Any and all awards and actual contract execution by the City of Madison is contingent upon availability of appropriate funds. In the event that funding is not available at the time of award and/or execution of the contract the City reserves the right to cancel the bid.
- 3.3 **Awarding of Contract.** In awarding the contract, the City reserves the right to award the purchase contract from any of the bidders, to reject any or all bids and to waive informalities in the bids received. Any award made will be to the lowest responsible and responsive bidder. For purposes of these Bid Documents, the following terms shall have the meanings ascribed to them as follows:
- (a) **Responsible Bidder.** One who, among other qualities determined necessary for performance, is competent, experienced, and financially able to perform the contract, as determined in the discretion of the City.
 - (b) **Responsive Bidder.** One who submits a bid that complies with the terms and conditions of the invitation to bid. Minor irregularities in the bid shall not defeat responsiveness.
- 3.4 **Bids.** Bidders must enclose bids in a sealed envelope addressed to the City of Madison, Madison Municipal Complex, 100 Hughes Road, Madison, Alabama 35758 and marked as referenced on page 1, the Title Page, **including "COM-15-11 City of Madison LED Street Lights Project" ENCLOSED.**
- 3.5 **Bid Acceptance:** No bid may be withdrawn for a period of thirty (30) days after the scheduled time for opening bids without the consent of the City of Madison.
- 3.6 **Bid Modification.** Any bidder may modify his bid by telegraphic communication at any time prior to the scheduled closing time, and provide further, the bidder mail the City a written confirmation of the telegraphic modification over the signature of the bidder prior to the closing time. The telegraphic communication should not reveal the bid price, but should provide the addition or subtraction or other modification so the City will not know the final prices or terms until the City opens the sealed bid. If the bidder does not provide written confirmation to the City within two (2) days from closing time, the City will not consider the telegraphic modification.
- 3.7 **Bids Opened in Public.** Bidders invited to be present at the opening of proposals, which will be in public.
- 3.8 **Bid Preparation Expense.** All expenses for preparing the bid for the City of Madison are to be borne by the bidder. The City of Madison is not liable for any costs incurred in producing and providing a bid.
- 3.9 **Blanks.** All bids must be made upon the blanks hereunto annexed and shall state the amount bid for each item as shown for which the bid is submitted.

3.10 **Bonds and Insurance.**

- a. **Bid Security Bond.** The bid security bond accompanying the bid shall be posted in an amount equal to five percent (5%) of the bid amount; provided, however, it shall not exceed \$10,000. The bid security bond is a guaranty that the bidder, if awarded the contract, will promptly executed a contract in accordance and in the manner and form required by these Bid Documents.

The Bid Security Bond forfeited to the City of Madison as liquidated damages if the successful Bidder fails or neglects to furnish, execute, and deliver the contract in accordance with the Instructions to Bidders.

- b. **Performance Bond.** The City will require the successful bidder to furnish a Performance Bond, in a form satisfactory to the City, within ten (10) days after notice of award of the contract. The Performance Bond must be one percent (100%) of the total amount of the Contract Price.
- c. **Payment Bond.** The City shall require a payment bond with good and sufficient surety, payable to the City in an amount equal to one hundred percent (100%) of the Contract price, with the obligation that such Contractor or Contractors shall promptly make payments to all persons supplying him or them with labor or materials or supplies for or in prosecution of the work provided for in such Contract and for the payment of reasonable attorneys' fees incurred by successful claimants or plaintiffs in civil actions on said bond, pursuant to *Ala. Code* 39-1-1.
- d. **Insurance.** After the City awards the bid, the successful Contractor shall provide to the City of Madison original Certificates of Insurance naming the City of Madison as an additional insured. Should the Contractor cancel any of the policies before the expiration date, the issuing company will mail 30 days written notice to the certificate holder. The Contractor shall furnish proof of coverage for automobile liability insurance, general liability insurance, pollution liability insurance and workers' compensation insurance. The City of Madison requires the Contractor to show evidence of insurance coverage on behalf of any subcontractors (if applicable), before entering into any agreement to sublet any part of the work for this bid.

The following insurance requirements are the minimum:

- ▶ Automobile Liability - \$1,000,000 (combined single limit)
- ▶ General Liability - \$1,000,000 (per occurrence)
- ▶ Personal and advertising Injury - \$1,000,000
- ▶ General Aggregate - \$1,000,000
- ▶ Products/completed Operations Aggregate - \$1,000,000
- ▶ Pollution Liability - \$1,000,000 (per occurrence or claim)
- ▶ Workers' Compensation – State statutory limits
- ▶ Employer's Liability - \$100,000 (each accident), \$100,000 disease (each employee)

The Contractor shall require certificates of insurance from sub-contractors. Sub-contractors will carry limits of insurance equal to or greater than those carried by the Contractor. The certificates shall evidence waivers of subrogation in favor of the city and the Contractor and shall be made available to the City upon request.

The interpretation of this contract will be in accordance with the laws of the State of Alabama.

- 3.11 **Brand names or equal.** If Solicitation indicates brand name or “equal” products area acceptable, the Bidder may propose an “equal” product but must be prepared to demonstrate those features that render it equal. Final determination of a product as and “equal” remains with the City. Brand names or equal, catalog numbers, weights, etc., are used to indicate levels of quality only and are not intended to restrict the bidding. If bidding on an item of another brand or manufacturer than specified, your bid should be accompanied by brochures or other pertinent literature giving detailed specifications of the item(s) on which you are bidding. Bids received without sufficient literature to determine equal quality may not be considered. Final determination as to equal quality will be made by the City.
- 3.12 **Certificate of Disadvantaged Business Enterprises (DBE).** The **Successful Contractor** must complete a certificate of Disadvantaged Business Enterprises (DBE) and certify, under penalty of perjury, that he/she or any person associated therewith in the capacity of owner, partner, director or officer or manager intends to comply with the DBE requirements.
- 3.13 **Certificate of Non-Suspension or Debarment.** A certificate of non-suspension or debarment must accompany the bid. The bidder must sign the certificate of non-suspension or debarment and properly notarized to certify that neither the bidder nor any representative of the bidder is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.
- 3.14 **Clarifications and Addendum.** Each bidder shall examine all bid documents and shall judge all matters relating to the adequacy and accuracy of such documents. Address all inquiries, suggestions, or requests pertaining to the Invitation to Bid to Marilyn Story at marilyni.story@madisonal.gov, fax to the Purchasing Division at (256) 772-5649 (faxes must clearly identify the bidder's name and solicitation number) or visit City's website at www.madisonal.gov for additional information.

Any explanation, clarification, interpretation or change to the Solicitation will be furnished as an Addendum to all Bidders who have been issued a Solicitation. Any other manner is not binding upon the City and Bidders shall not rely upon such explanation, clarification, interpretation or change. The City of Madison shall not be liable for oral interpretations given by a City of Madison employee, representative, or others.

It shall be the responsibility of each bidder prior to submitting his or her bid, to review the website or contact the Purchasing Division to determine if the City issued any addenda on this project. Each bidder must make sure the addenda are a part of the bid.

- 3.15 **Contract Forms.** Any agreement, contract, or Purchase Order resulting from the acceptance of a bid shall be on forms provided or prior approved by the City of Madison. Any erasures, delineations, or alterations are to be clear and initialed by the person signing.
- 3.16 **Construction Crews.** The Contractor will be required to furnish at least one construction crew during the project. Additional crews required if stated in scope of work/specifications or Supplemental Terms and Conditions.
- 3.17 **Definitions.** Where the following words, or the pronouns used in their stead, occur herein, they shall have the following meaning:

<u>City or City</u>	Shall mean the City of Madison, or its authorized and legal representatives.
<u>Contractor</u>	Shall mean the party of the first part to the construction agreement or the legally authorized representatives of such party.

<u>Gender</u>	A word importing one gender shall, if appropriate, extend to and be applied to the other gender. The masculine shall include the feminine and vice versa, unless the context clearly indicates otherwise.
<u>Inspector</u>	Shall mean the inspector designated by the City.
<u>Project</u>	Shall mean the labor, materials and all work to be done by Contractor that is the subject of the bid and contract.
<u>Singular/Plural</u>	The singular shall include the plural and vice versa, unless the context clearly indicates otherwise.

- 3.18 **Determination of Contract Award.** Award of bid is based on price, qualification, experience and where applicable, responsiveness, operating costs, delivery time, requirements, performance data, and guarantees of materials and equipment for each separate location.
- 3.19 **Disqualification of Bids.** The City of Madison reserves the right to disqualify bids that are incomplete, deceptive, frivolous, not signed, and conditional. The City may reject bids that contain arithmetical errors, or do not comply with mandatory formats, or contain irregularities.
- 3.20 **Estimated Quantities.** The Contractor agrees that the Contractor shall consider the prices given in the Proposal as the quantities required for completion of work. This is a lump sum bid and the quantities are subject to increase or decrease. The bidder understands this is an offer to perform the work whether the quantities are increased or decreased, at the lump sum bid price except where the Scope of Work changed. If the Scope of Work changes, then the lump sum price will be adjusted according to the unit bid price.
- 3.21 **Examination of Contract Documents and Site of the Work.** Before submitting a proposal for the work, all bidders shall carefully examine the Contract Documents, visit the site, and satisfy themselves as to the nature and location of the work, and the general and local conditions, including weather, the general character of the site and/or building, the character and extent of existing work within or adjacent to the site, any other work being performed or proposed thereon at the time of submission of their bids. They shall obtain full knowledge as to transportation, disposal, handling, and storage of materials, availability of water, electric power, and all other facilities in the area, which will have a bearing on the performance of the work for which they submit their proposals. They shall verify existing utilities to determine all requirements for disconnecting, capping, or protecting such work in accordance with the requirements of the utility company or the City. The submission of a proposal shall be conclusive evidence that the bidder has made such examination and visit and has judged and satisfied himself as to conditions to be encountered regarding the character, difficulties, quality, and quantities of work to be performed and the material and equipment to be furnished, and as to the Contract requirements and contingencies involved.

The Contractor shall carefully study and compare the Contract Documents with each other, with information furnished by the City, and shall at once report to the City errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the City for damage resulting from errors, inconsistencies, or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the City within three (3) calendar days. If the Contractor performs any work activity knowing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the City, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the costs for correction.

- 3.22 **Exceptions, Variance, and Alternates.** Bidder shall indicate all variances, exceptions and alternates from the City of Madison requested scope of work/specifications, terms, and conditions on separate sheets entitled and clearly marked "Exceptions, Variances, and Alternates". Unless otherwise provided, the City of Madison shall assume that the Bidder is meeting all requirements of the scope of work/specifications and there are no variances, exceptions and alternates attached to the said bid. If the City request alternates, the City of Madison reserves the right to award only the base bid without any of the alternates or may award the base bid along with one or more of the alternates. It is at the sole discretion of the City of Madison to consider or not consider alternate bids.
- 3.23 **Indemnity.** To the maximum extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the City, its officers, members, employees, and agents from all claims and losses, including attorney's fees and litigation costs arising out of property losses or health, safety, personal injury or death claims by the Contractor, its subcontractors of any tier, and their employees, agents, invitees or any other party regardless of the fault, breach of contract, or negligence of the City, excepting only such claims or losses that have been adjudicated to have been caused solely by the negligence of the City or the Engineer and regardless of whether or not the Contractor is or can be named a party in a litigation.
- 3.24 **Inspections.** It is mutually understood and agreed that if any time the City Project Manager or designee shall be of the opinion that the contract or any part thereof is unnecessarily delayed or that the rate of progress or delivery is not satisfactory, or that the contractor is willfully violating any of the conditions or covenants of the agreement, or is executing the same in bad faith, the City Project Manager or designee shall have the power to notify the contractor of the nature of the complaint. Notification shall constitute delivery of notice or letter to address given in the bid. If after three (3) working days of notification the conditions are not corrected to the satisfaction of the City Project Manager or designee, he/she shall thereupon have the power to take the necessary actions to complete the work or delivery herein described, or any part thereof, and the expense thereof, so charged, shall be deducted from monies the City due the Contractor under and by virtue of this agreement.
- 3.25 **Intention.** The Instruction to Bidders, Contract Agreement, Modifications to contract Agreement, Bid and Proposal, and Scope of Work/Specifications shall cover the complete work to which they relate.
- 3.26 **Interpretation of Scope of Work/Specifications.** If any bidder contemplating submitting a bid for the proposed Contract is in doubt as to the true meaning of any part of the scope or work/specifications or other proposed Contract Documents, he may submit to the City a written request for an interpretation thereof. The bidder submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents made only by addendum duly issued and a copy of such addendum mailed or delivered to each person receiving a set of such documents. The City will not be responsible for any other explanations or interpretations of the proposed documents.
- 3.27 **Late Bids.** Bids must be received in the Purchasing Division prior to the Due Date and Time (**15 minutes prior to set time for bid opening**). All bids received after the Due Date and Time are considered late and will be returned to the Bidder unopened. It is the sole responsibility of the Bidder to ensure timely delivery of the bid. The City will not be responsible for failure of service on the part of the U.S. Postal Office, courier companies, or any other form of delivery service chosen by the Bidder.

- 3.28 **Legal Name.** It is essential that the principal and duly authorized officer of the firm who has the authority to bind the bidder to the submitted bid shall sign the bid in order to validate legally the intent of the bidder. Bidders who fail to provide this requirement shall result in “Non-Responsive” status and result in the rejection of the bid.
- 3.29 **Licenses and Permits.** The successful bidder is responsible for acquiring appropriate business licenses and permits to conduct work with the City of Madison. In addition to the business license and permit requirements, the successful bidder is required to remit all applicable sales and use tax and contractors/subcontractors license fee in accordance with City ordinance and codes.
- 3.30 **Lien Protection.** The City of Madison shall prohibit any bidder or contractor from filing a lien or encumbrance against the items delivered to or against the owned property of the City.
- 3.31 **Non-Collusion.** A non-collusion affidavit must accompany the bid. The bidder must sign the non-collusion affidavit and properly notarized to certify that neither the bidder nor any representative of the bidder is a party to or has participated in any or collusion in restraint of freedom of competition with respect to the bid.
- 3.32 **Non-Discrimination.** The City of Madison hereby notifies all bidders that the City will affirmatively ensure that small businesses, minority-owned firms, and women’s business enterprises afforded full opportunity and consideration when submitting proposals in response to this invitation. The City of Madison will reply on prime Contractors seeking to do business with the City to ensure that small businesses, minority-owned firms and women’s enterprises afforded full opportunity and consideration to participate as a sub-contractor. The City of Madison will not discriminate against small businesses, minority-owned firms, and women’s business enterprises based on the grounds of race, color, sex, creed, or national origin when reviewing proposals for award of contract. The City of Madison will not discriminate against any person based on race, color, religion, sex, age or disability.
- ~ Americans with Disabilities Act:**
The Contractor must comply fully with the Americans with Disabilities Act and indemnity and hold harmless the City of Madison from all cost, including but not limited to damages as well as attorney’s fees and staff time, in any action or proceedings brought alleging a violation of the American with Disabilities Act.
- 3.33 **Notice of Acceptance.** The City shall notify the successful Bidder of its acceptance of the bid by a Notice of Award, depositing an executed copy thereof in the US mail, and/or notification by telephone or email.
- 3.34 **Performance Management.** During the performance of a contract, the Contractor shall address concerns and questions to the assigned City’s representative at the awarding of said contract and shall not take directions from other persons or departments that may visit the site from time to time.
- 3.35 **Preconstruction Conference.** The Contractor shall attend a preconstruction conference prior to commencement of the work, which the City will schedule.
- 3.36 **Prices.** Bids shall be firm unless otherwise specified. Total Price shall be entered on the Bid Proposal sheet in **ink** in the space provided. In the event of a discrepancy between unit price and extended price, the unit price shall govern.

- 3.37 **Qualifications.** The Contractor shall be fully equipped, staffed, certified and licensed for the work performed. In making the award, the City will consider qualifications, ability and responsibility of all bidders and bidders' proposed sub-contractors. The City will accept bids of \$50,000 or more from qualified General Contractors licensed by the State Licensing Board of General Contractors of Alabama as required by Code of Alabama (1975) Titles 34 and 46 as amended. The City will only accept bids from General Contractors licensed prior to the date of the bid opening. **The City will not open sealed bids and will reject all bids submitted without the current General Contractor's License Number clearly noted on the outside of the sealed envelope.** In accordance with Alabama Code 39-3-5, preferences shall be given to Alabama resident contractors and a nonresident bidder domiciled in a state having laws granting preference to local contractors shall be awarded to the Contract only on the same basis as the nonresident bidder's state awards contracts to Alabama contractors bidding under similar circumstances.
- a. Contractor shall own or have access to all equipment and instrumentation required for work performed under the contract, and the equipment and instrumentation shall be available for the duration of the contract.
 - b. All employees of the Contractor shall have knowledge and experience including all applicable current licenses, certifications, and permits necessary to perform assigned duties under the contract.
 - c. Any employee of the Contractor, who in the opinion of the City is incompetent or whose conduct becomes detrimental to work or safety shall be immediately removed from association with the contract.
- 3.38 **Regulations, Code and Standards.** All bidders must be authorized to transact business in the State of Alabama. It shall be the responsibility of each supplier to assure compliance with any and all Codes and Standards including but not limited to OSHA, EPA, ADEM, and other Federal, State of Alabama, Madison County and City of Madison ordinances, rules, regulations, or other requirements that apply to the goods and/or services provided.
- 3.39 **Return of Bid Guaranties.** The City will, within ten (10) days following the opening of bids, return the certified check or bid bond of all bidders, except the checks or bonds posted by the three lowest bidders and upon the final award and execution of Contract the remaining checks or bonds shall be promptly returned. No interest will be paid by the City upon return of bid bonds or checks. If the award of the bid is deferred for more than fifteen (15) days, all bid guaranties shall be returned except those of potentially successful bidders.
- 3.40 **Right to Reject Bids.** The City reserves the right to reject any or all bids and/or to waive informalities. No bids will be received after time set for opening proposals. Any unauthorized conditions, limitations or provisos attached to the proposal, except as provided herein, will render it informal and may cause its rejection. Unbalanced bids will be subject to rejection. Any bidder may withdraw his bid, either personally or by telegraphic or written request, at any time prior to the scheduled closing time for receipt of bids.
- 3.41 **Sales and Use Tax.** Contractors are responsible for applicable taxes. Act 2004-638 repealed the contractor's exemption found in section 40-9-33 of the Code of Alabama effective July 1, 2004. Section 40-9-33 will not be revived when the provisions of Act 2004-638 terminated in October 1, 2006.
- 3.42 **Signature.** The Bidder must sign each document in the Solicitation requiring a signature. Any change made to the bid must be initialed by the Bidder. All documents requiring a signature must be in BLUE ink.

- 3.43 **Statement of Qualifications/Experience.** Each bidder shall submit a Statement of Experience for performance of the Contract to include a detailed list of **at least five (5) references** (including names of owners, name of project manager and phone number and completion dates) of projects undertaken by the bidder **within the last five (5) years** using the appropriate Experience Statement in Section 3.0. The Bidder must enclose the completed Experience Statement in the envelope with the sealed bid. The Bidder's signed Experience Statement allows the City to confirm the Bidder's experience.
- 3.44 **U.S. Products Preference.** The successful bidder (Contractor) shall comply with *Ala. Code* 39-3-1 by agreeing to utilize in the execution of the project, materials, supplies and products manufactured, mined, processed or otherwise produced in the United States or its territories, if the same are available at reasonable and competitive prices and are not contrary to any sole source specification implemented under *Ala. Code* 39-2-2(f). It is further stipulated that a breach of the foregoing provision of this agreement by the successful bidder or Contractor as the case may be, in failing to utilize domestic products where available at reasonable prices shall result in a downward adjustment in the Contract price equal to any realized savings or benefits to the Contractor.
- 3.45 **Work to be Done.** The City contemplates the work generally described in the Notice to Bidders (Section 1.0), as may be more particularly shown on the plans, specifications, drawings and Bid Documents.

The Contractor will replace at his own expense, all construction materials, tools, equipment or other items used or necessary in the performance of this Contract that may be broken, damaged, stolen, lost or misused. The Contractor will also be responsible for repair or replacement of any real or personal property of third parties, which is damaged, broken, stolen, or lost because of Contractor's performance or failure to perform under this contract.

SECTION 4.0
STATEMENT OF QUALIFICATIONS/EXPERIENCE
BID NO. COM-15-11
Submit with Proposal

List at least five (5) references for services of a similar nature performed within the last five (5) years.

I hereby certify that I have performed the work listed below:

(Please sign in **BLUE** ink)

Name of Proposer

Date

Name of Authorized Representative

Signature and Title (authorized representative)

(a) Owner Name	(b) Owner Project Manager Name and Phone Number	(c) Project Name	(d) Completion Date
1.			
2.			
3.			
4.			
5.			

SECTION 5.0
NON-COLLUSION BIDDING AFFIDAVIT
BID NO. COM-15-11
Submit with Proposal

By submission of this bid, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies, as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief:

1. The prices in this proposal arrived at independently without collusion, consultation, communication, or agreement for restricting competition as to any matter relating to such prices with any other Proposer or with any competitor.
2. Unless otherwise required by law, the Proposer has not knowingly disclosed prices quoted in this proposal prior to opening, directly or indirectly, to any other Proposer or to any competitor.
3. The Proposer made no attempt and will not make attempt to induce any other person, partnership, corporation to submit or not to submit a proposal for restricting competition.
4. I certify that neither any representative of the Proposer nor I, to my knowledge is a party to, or has participated in, any agreement or collusion in restraint of freedom of competition with respect to the project bid herein.

(Please sign in **BLUE** ink)

Dated _____

Signature

Printed Name

I, _____ the person who subscribed the above affidavit, do affirm under the penalties of perjury that the statements hereinabove set forth are true in every respect. If I am not the Proposer, I was at the time of said subscription the agent, officer, or employee of the Proposer authorized to execute said affidavit in the name of the Proposer.

Dated: _____

Signature

Printed Name

STATE OF _____)

CITY OF _____)

COUNTY OF _____)

SWORN to and subscribed before me this _____ day of _____, 20_____

Notary Public

My commission expires: _____

SECTION 6.0
CERTIFICATE OF NON-SUSPENSION OR DEBARMENT
BID NO. COM-15-11
Submit with Proposal

1. All persons or firms, including subcontractors, must complete this certification and certify, under penalty of perjury, that, except as noted below, he/she or any person associated therewith in the capacity of owner, partner, director, officer or manager:
 - a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - b. have not, with the three (3) year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification; and
 - d. have not, within the three (3) year period preceding this certification, had one or more public transactions (Federal, state or local) terminated for cause or default.
2. If such persons or firms later become aware of any information contradicting the statements of paragraph (1), they will promptly provide the information to City of Madison Finance Department.

If there are any exceptions to this certification, insert the exceptions in the following space:

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

(Please sign in **BLUE** ink)

Dated _____

Signature

Printed Name

I, _____ the person who subscribed the above affidavit, do affirm under the penalties of perjury that the statements hereinabove set forth are true in every respect. If I am not the Proposer, I was at the time of said subscription the agent, officer, or employee of the Proposer authorized to execute said affidavit in the name of the Proposer.

Dated: _____

Signature

Printed Name

STATE OF _____)

CITY OF _____)

COUNTY OF _____)

SWORN to and subscribed before me this _____ day of _____, 20_____

Notary Public

My commission expires: _____

SECTION 7.0
CERTIFICATE OF DISADVANTAGED BUSINESS ENTERPRISES (DBE)
BID NO. COM-15-11
(Required ONLY by Successful Bidder)

The Contractor must execute this certificate and certifies, under penalty of perjury, that he/she or any person associated therewith in the capacity of owner, partner, director or officer or manager intends to comply with and understands the following:

1. The Contractor will submit a Disadvantaged Business Enterprise Plan to the City within the time specified in the contract documents.
2. If the Contractor fails to provide the City a Disadvantaged Business Enterprise Plan within the time specified in the contract documents, the contract between the City and the Contractor will terminate in accordance the time specified in the contract documents.
3. The Contractor understands that failure to comply with the contract documents relating to Disadvantaged Business Enterprises, when such are applicable, will be cause for termination of the contract.
4. The Contractor will ensure that Disadvantaged Business Enterprises afforded full opportunity and consideration to participate as sub-contractors.

The Contractor declares that he/she or any person associated therewith in the capacity of owner, partner, director or officer or manager intends to comply with and understands the statements hereinabove set forth in every respect.

(Please sign in **BLUE** ink)

Date: _____

Signature

Print Name

I, _____ the person who subscribed the above certificate, do affirm under the penalties of perjury and will comply with the statements hereinabove set forth in every respect. If I am not the Bidder, I was at the time of subscription the agent, officer, or employee of the Bidder authorized to execute said certificate in the name of the Bidder.

Date: _____

Signature

Print Name

STATE OF _____

CITY OF _____

COUNTY OF _____

SWORN to and subscribed before me this ____ day of _____, 20_____.

Notary Public

My commission expires: _____

SECTION 8.0
SCOPE OF WORK/SPECIFICATIONS
BID NO. COM-15-11-A

Intergraph Way and Madison Boulevard Intersection

General:

This project consists of removing the existing street lights and installing new LED street lights at the intersection of Intergraph Way and Madison Boulevard in the City of Madison. Currently there are four (4) existing street lights which will be replaced with new approved LED street lights or approved equals. The specifications for the new street lights to be installed are listed below.

Specifications of approved LED fixtures:

- 1:** Holophane LED series, area light – LEGEND Roadway LED
 120 LEDS, 350 mA Driver, 6,000 K CCT, Auto-Sensing Voltage, 120 thru 277
 2 inch Pipe, Grey Polyester Powder Finish, Type 3, Wide Asymmetric

- 2:** NEPTUN LED High Performance Roadway Luminaire – KOMETA
 120 LEDS, 63 lm per Watt at 525mA Driver, 6,000 K CCT, 120V thru 277
 Electrocoated Grey Finish, Type 3

- 3:** PHILIPS LUMEC – Roadway LED
 98 LEDS, 180 Watt, 4000 K CCT, Electronic Driver, 120V thru 277
 Natural Aluminum Paint Color, Type 3

Photocells shall be included with installation.

The contractor shall be responsible for removing the existing light fixtures and replacing them with the new light fixtures as stated above. The contractor shall remove all necessary parts in order to properly install the new fixtures. The contractor shall provide any additional parts needed for installation such as wiring, adapters, etc.

SECTION 8.0
SCOPE OF WORK/SPECIFICATIONS
BID NO. COM-15-11-B

Lanier Road and Madison Boulevard Intersection

General:

This project consists of removing the existing street lights and installing new LED street lights at the intersection of Lanier Road and Madison Boulevard in the City of Madison. Currently there are four (4) existing street lights which will be replaced with new approved LED street lights or approved equals. The specifications for the new street lights to be installed are listed below.

Specifications of approved LED fixtures:

- 1:** Holophane LED series, area light – LEGEND Roadway LED
 120 LEDS, 350 mA Driver, 6,000 K CCT, Auto-Sensing Voltage, 120 thru 277
 2 inch Pipe, Grey Polyester Powder Finish, Type 3, Wide Asymmetric

- 2:** NEPTUN LED High Performance Roadway Luminaire – KOMETA
 120 LEDS, 63 lm per Watt at 525mA Driver, 6,000 K CCT, 120V thru 277
 Electrocoated Grey Finish, Type 3

- 3:** PHILIPS LUMEC – Roadway LED
 98 LEDS, 180 Watt, 4000 K CCT, Electronic Driver, 120V thru 277
 Natural Aluminum Paint Color, Type 3

Photocells must be included with installation.

The contractor shall be responsible for removing the existing light fixtures and replacing them with the new light fixtures as stated above. The contractor shall remove all necessary parts in order to properly install the new fixtures. The contractor shall provide any additional parts needed for installation such as wiring, adapters, etc.

SECTION 8.0
SCOPE OF WORK/SPECIFICATIONS
BID NO. COM-15-11-C

Zierdt Road and Madison Boulevard Intersection

General:

This project consists of removing the existing street lights and installing new LED street lights at the intersection of Zierdt Road and Madison Boulevard in the City of Madison. Currently there are four (4) existing street lights which will be replaced with new approved LED street lights or approved equals. The specifications for the new street lights to be installed are listed below.

Specifications of approved LED fixtures:

- 1:** Holophane LED series, area light – LEGEND Roadway LED
 120 LEDS, 350 mA Driver, 6,000 K CCT, Auto-Sensing Voltage, 120 thru 277
 2 inch Pipe, Grey Polyester Powder Finish, Type 3, Wide Asymmetric
- 2:** NEPTUN LED High Performance Roadway Luminaire – KOMETA
 120 LEDS, 63 lm per Watt at 525mA Driver, 6,000 K CCT, 120V thru 277
 Electrocoated Grey Finish, Type 3
- 3:** PHILIPS LUMEC – Roadway LED
 98 LEDS, 180 Watt, 4000 K CCT, Electronic Driver, 120V thru 277
 Natural Aluminum Paint Color, Type 3

Photocells shall be included with installation.

The contractor shall be responsible for removing the existing light fixtures and replacing them with the new light fixtures as stated above. The contractor shall remove all necessary parts in order to properly install the new fixtures. The contractor shall provide any additional parts needed for installation such as wiring, adapters, etc.

**SECTION 9.0
PROPOSAL
BID NO. COM-15-11**

The Bidder declares that he or she has informed himself or herself fully in regard to all conditions pertaining to the work to be provided; and has examined the site, specifications and Bid Documents relative to the work to be provided.

The Bidder proposes and agrees, if this proposal is accepted, to contract with the City of Madison, Alabama, to provide all the work as described in the Notice to Bidders, Invitation to Bid, Specifications, Instructions to Bidders and related documents, which are made a part hereof to the same extent as fully set out herein, and in full and complete accordance with the described and reasonably intended requirements of the Specifications and to the full and entire satisfaction of the City Council of the City of Madison, Alabama. **This proposal is to remove and replace LED Area Lights for (a) Intergraph Way and Madison Boulevard (b) Lanier Road and Madison Boulevard and (c) Zierdt Road and Madison Boulevard Intersections**

Total Bid (A): Intergraph Way and Madison Boulevard Intersection \$ _____

Total Bid (B): Lanier Road and Madison Boulevard Intersection \$ _____

Total Bid (C): Zierdt Road and Madison Boulevard Intersection \$ _____

Attached hereto is a Bid Bond or Cashier's Check for the sum of \$ _____

The Bidder acknowledges Non-Collusion Affidavit is signed, notarized and enclosed: _____

The Bidder acknowledges receipt of addendum (addenda): _____

The Bidder acknowledges Statement of Qualification/Experience enclosed: _____

The Bidder acknowledges General Contractor's License Number on envelope: _____

The Bidder acknowledges Certificate of Non-Suspension and Debarment enclosed: _____

The Bidder acknowledges Proposal Form is complete and signed: _____

The Bidder further proposes and agrees hereby to commence work under his Contract in accordance with a written Notice to Proceed, and to complete fully all work there under within **three (3) consecutive calendar months** of Notice to Proceed.

(Please sign in **BLUE** ink)

Legal Name of Company

Signature

Address

Print Name

City, State, Zip Code

Date

Phone Number

Fax Number

**SECTION 10.0
CONTRACT AGREEMENT**

SAMPLE CONTRACT

STATE OF _____)

COUNTY OF _____)

CITY OF _____)

This agreement made and entered into this _____ day of _____, by and between _____, hereinafter sometimes called the CONTRACTOR, and the CITY OF MADISON, Alabama, a municipal corporation, hereinafter sometimes called the City or City.

W-I-T-N-E-S-S-E-T-H:

In consideration of \$_____ and of the mutual agreements and provisions herein contained, the Contractor and the City agree in regard to the project or work known as **City of Madison LED Street Lights Projects for LED Area Lights for (a) Intergraph Way and Madison Boulevard Intersection (b) Lanier Road and Madison Boulevard Intersection and (c) Zierdt Road and Madison Boulevard Intersection.**

The Contractor shall furnish at his own cost and expense all labor, tools, equipment and transportation as are herein and in the Contract documents required to be furnished by the Contractor, and shall perform all the work in a manner and form required to construct the work described in and shown on the Contract Documents as the same are hereinafter more specifically described and as provided by the following enumerated plans, specifications and documents which are attached hereto and made a part hereof, as if fully set out herein, namely:

- (a) Notice to Bidders
- (b) Advertisement for Bids
- (c) Contractor to Furnish
- (d) Instructions to Bidders
- (e) Scope of Work
- (f) Proposal
- (g) Contract Agreement
- (h) General and Detailed Specifications (if attached)
- (i) Detailed Drawings (attached)
- (j) Supplemental and Special Conditions (if attached)
- (k) Modifications to Contract Agreement (if attached)

In addition, addenda attached hereto together with all plans and drawings on file in the office of the City's Finance and Purchasing Director at 100 Hughes Road, Madison, Alabama.

10.1 **Acceptance of Final Estimate.** The acceptance by the Contractor of the final payment shall operate as a release by the Contractor to the City from all claims and liabilities to the Contractor for all work done or materials furnished.

- 10.2 **Archaeological and Historical Findings.** Should the Contractor encounter, during his operations, any building or part of a building, structure, or object which appears to be of historical or archaeological significance, he shall immediately cease operations in that location and notify the Architect/Engineer. The Architect/Engineer will immediately investigate the Contractor's finding and will direct the Contractor to either resume his operations or to suspend operations as directed.

Should the Architect/Engineer order suspension of the Contractor's operations in order to protect an archaeological or historical finding, or order the Contractor to perform extra work, such shall be covered by an appropriate Contract modification (change order). If appropriate, the Contract modification shall include an extension of Contract time.

- 10.3 **Attorneys' Fees upon Default.** In the event that any action and/or proceeding shall be instituted, either by the City or by the Contractor, for the enforcement of any of their respective rights and/or remedies in and under this contract, the prevailing party shall be entitled to recover from the other party all costs incurred by said prevailing party in said action and/or proceeding, including, but not limited to, reasonable attorneys' fees to be determined and fixed by a court of competent jurisdiction.

- 10.4 **Authority and Duties of Inspector Corrections of Plans, etc.** City inspectors shall be authorized to inspect all work done. The Inspector shall not be authorized to alter or waive any requirements of the Specifications. He shall have authority to call the attention of the Contractor to failure of the work to conform to the specifications and Contract. He may suspend the work until any questions at issue can be referred to and decided by the Architect/Engineer.

The Architect/Engineer, Inspector, City, nor other representatives for the City, shall be responsible in any way for construction means, methods or techniques, nor for the safety of the construction work, progress, or employees of the Contractor or any subcontractors.

The presence of the Inspector shall in nowise lessen the responsibility of the Contractor pursuant to this agreement.

- 10.5 **Binding Effect.** The City's and the City' respective successors and assigns shall be fully bound by this Contract and each and every condition, provision, and term hereof just as they are bound. Each and every condition, provision, and term of this Contract inures, and shall inure, to the benefit of the City and the City and of their respective successors and assigns.

- 10.6 **Captions.** The captions of this Contract are for convenience and reference only and in no way define, describe, extend, or limit the intent or scope of this contract.

- 10.7 **Change Orders.** Change orders shall be allowed only under the following conditions: (1) minor changes for a total monetary amount less than that required for competitive bidding (\$7,500); (2) changes for matters incidental to the original Contract necessitated by unforeseeable circumstances arising in the course of work under the contract; (3) changes due to emergencies; (4) changes provided for in the original bidding and original Contract Documents as alternates; or (5) changes of relatively minor items not contemplated when the plans and specifications were prepared, which are in the public interest and which do not exceed 10% of the Contract price.

The Contractor or successful bidder is expected to complete the project as bid and specified within the financial parameters stated therein. However, if it shall be determined that a change order is needed in any given case during the performance of a contract, the Contractor shall

promptly notify the representative of the City in writing on a Change Order Request form supplied by the City, and shall not implement such change prior to notifying the representative of the City. If the change is minor in the opinion of the representative of the City and does not involve, (1) an adjustment in the Contract sum, construction bid price, (2) result in extension of the Contract time, or (3) a material change in the Contract scope of services, then the City's representative may authorize the change in writing to the Contractor. The Contractor shall not perform such change until receipt of such written change order on a form provided by the City.

In the event the change order requested by the Contractor involves (1) an increase in the Contract sum or construction bid price, (2) extension of the Contract time, or (3) materially change the Contractor's scope of work or services, then the Contractor shall request a change order on the City's form and present the same to the City representative. The representative of the City shall determine whether this is a change order which can be allowed and, if so, under what exception it would fall. The representative of the City shall then document the same, attach the same to the Contractor's request for a change order and submit the same with his recommendation to the City at its next regularly scheduled Council meeting for approval.

The City reserves the right to institute change orders as City pursuant to the aforesaid terms and conditions.

In no event is a change order to be executed prior to approval thereof by the City, except for emergencies.

10.8 **City's Breach.** If the City shall fail to perform any of the material conditions, provisions, or terms of this contract, the Contractor shall promptly give to the City written notice of such failure to so perform. Upon receipt from the Contractor of such written notice, should the City, within thirty (30) days after the date of its receipt, fail to cure such failure to perform, then such failure shall be deemed a breach of the City's obligations under this contract, and the Contractor may thereafter pursue any and all remedies available to it under applicable law, including, but not limited to, the right, but not the obligation, to cure said breach, and submit a written statement of reasonable costs and expenses, including, without limitation, attorney's fees and expenses incurred in curing said breach. In such event, the City shall, within thirty (30) days following receipt of such written statement, reimburse the Contractor for such reasonable costs and expenses incurred in curing said breach.

10.9 **Claims for Extra Cost.** If the Contractor claims that any instructions by drawings or otherwise involve extra cost or any extension of time, he shall notify the City in writing within ten (10) days after the receipt of such instructions and in any event before proceeding to execute the work. Thereafter, the procedure shall be the same as that described below for change orders. No such claim shall be valid unless made in accordance with the terms of this section.

Except as otherwise herein provided, no charge for any extra work will be allowed unless the same has been ordered in writing by the City and the price stated in such order.

10.10 **Competent Labor.** The Contractor shall employ only competent and skilled workers on the project.

10.11 **Compliance Certificate.** The City, by executing this Contract, hereby certifies that the Contract awarded by these documents is, to the best of its knowledge and belief, let in compliance with Title 39 of the Code of Alabama, as amended, and with all other applicable provisions of law.

- 10.12 **Compliance with Laws, Ordinances, Etc.** The Contractor shall comply with local and state regulations governing the operation of premises which are occupied and shall perform the Contract in such a manner as not to interrupt or interfere with the operation of other facilities.

THE CONTRACTOR SHALL COMPLY WITH ALL FEDERAL AND STATE LAWS AND REGULATIONS, CITY ORDINANCES, APPLICABLE PROVISIONS OF THE ZONING CODE, SUBDIVISION REGULATIONS, BUILDING CODES, PLUMBING CODES, ELECTRICAL CODES, AND CONSTRUCTION SPECIFICATIONS OF THE CITY.

- 10.13 **Contract Documents.** As used throughout the documents constituting the contract, the term "Contract documents" shall mean and include the following: Notice to Bidders, the Advertisement for Bids, Addenda, the Instructions to Bidders, Contractor to Furnish, the Proposal, the General Specifications, the Detail Specifications, Supplemental and Special Conditions, if attached hereto, together with this agreement and any modifications thereof and the drawings, plans and profiles that are now on file in the Office of the City's Consulting Architect/Engineer, the Performance Bond and the Payment Bond, executed by the Contractor in connection with this Contract and insurance requirements and certificates.

All such documents hereinabove enumerated constitute the Contract between the parties to the same extent as if each were set out in full in this agreement.

- 10.14 **Contract Price.** The City will pay and the Contractor shall accept in full consideration for the performance of the work/project, subject to additions and deductions (including but not limited to liquidated damages) as provided in the Contract Documents and herein, a sum of not to exceed the amount of the Contractor's bid as awarded by the City.

- 10.15 **Contractor's Breach.** If the Contractor shall fail to perform any of the material conditions, provisions, or terms of this contract, the City shall promptly give to the Contractor written notice of such failure to so perform. Upon receipt from the City of such written notice, should the Contractor within thirty (30) days after the date of its receipt, fail to cure such failure to perform, then such failure shall be deemed a breach of the Contractor's obligations under this contract, and the City may thereafter pursue any and all remedies available to it under applicable law, including, but not limited to, the right, but not the obligation, to cure said breach, and submit a written statement of reasonable costs and expenses, including, without limitation, attorney's fees and expenses incurred in curing said breach. In such event, the Contractor shall, within thirty (30) days following receipt of such written statement, reimburse the City for such reasonable costs and expenses incurred in curing said breach.

- 10.16 **Contractor's Insurance, Generally.**

(a) The Contractor shall not commence work under this Contract until he has obtained all insurance required by the Contract documents and such insurance has been accepted by the City. The Contractor shall not allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and accepted by the City. This insurance shall include a Waiver of Subrogation as to the City and its respective officers, agents, employees, and subcontractors. The Contractor shall maintain required insurance during the term of the Contract including any extensions and shall require subcontractors to do same.

The obtaining and maintaining by Contractor and subcontractors of the insurance required herein does not relieve the Contractor of any responsibilities, obligations or duties to the City pursuant to this contract.

The City shall have the right to inspect and approve Contractor's insurance coverage above specified. Should the City deem it advisable to modify the coverage in any way, it shall so request of the Contractor in writing and should the Contractor fail to modify the coverage, then the City may pay cost of any increased coverage or take credit for any decreases as may be appropriate.

Neither the setting of insurance limits or requirements nor the acceptance or approval of the same by the City imply or represent that the limits or the insurance carrier is sufficient or that such insurance actually has been obtained, that being the responsibility of the Contractor. Review or acceptance of insurance by the City or representatives of the City shall not relieve or decrease the liability of Contractor hereunder.

In the event any work under this Contract is performed by a subcontractor, the Contractor shall be responsible for any liability directly or indirectly arising out of the work performed under this Contract, regardless of whether or not such work is covered by the subcontractor's insurance.

Where work under this Contract includes any water or navigational exposure, coverage shall be included to cover Federal Longshoreman's and Harbor Worker's Act and Federal Jones Act or other applicable law or regulations.

- (b) Proof of Carriage of Insurance. The Contractor shall furnish the City certificates of insurance as proof of carriage of the insurance required herein. If any required insurance coverage lapses during the performance of this Contract, the Contractor shall provide the City with a new certificate of insurance reflecting continuation of the required insurance coverage. Insurance shall be in a form satisfactory to the City.
- (1) Cancellation: The certificate and policy, as the case may be, shall state that the City shall be given thirty (30) days' written notice of cancellation or any change in the insurance coverage. Certificate shall not exclude liability for failure to notify nor shall it state "endeavor to notify" in lieu of what is required. Upon receipt of any notice of cancellation or alteration, Contractor shall, within ten (10) days, procure other policies of insurance similar in all respects to the policy or policies about to be cancelled or altered, and if Contractor fails to provide, procure, and deliver acceptable policies of insurance, or satisfactory evidence thereof, in accordance with the terms hereof, then at City's option and without limitation of any other rights or remedies of the City, the City may obtain such insurance at the cost and expense of the Contractor, without the need of any notice to the Contractor.
 - (2) There shall be a statement that the Contractor or any subcontractors waive subrogation as to the City, its officers, members, agents, and employees.
 - (3) There shall be a statement that full aggregate limits apply per job or contract.
 - (4) Authorized representatives of the insurance company shall certify that he/she is authorized to execute certificate and that coverage stated are correct and in compliance with the Contract Documents. A power of attorney granting the representative authority to issue all required insurance may be provided in lieu of said certification.
 - (5) All insurance for which it is required that the City be named an additional insured shall include the condition that it is primary and that any liability insurance maintained by the City is excess and non-contributory.

10.17 **Construction Schedule and Periodic Estimates.** Immediately after execution and delivery of the Contract and before the first partial payment is made, the Contractor shall deliver to the City and Architect/Engineer a construction progress schedule in a form satisfactory to the City, showing the proposed dates of commencement and completion of each of the various activities, of work required under the Contract documents, the interrelationship of each activity, sequences, resources for each and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule. The Contractor shall also furnish (a) a detailed estimate giving a complete breakdown on the Contract price and (b) periodic itemized estimates of the work done for the purpose of making partial payments; however, the same will not be considered as fixing a basis for additions to or deductions from the Contract price.

NOTE: Depending upon the complexity of the work, the City may require construction progress minutes (c.p.m.) or equivalent meeting all criteria above.

10.18 **Construction Stakes.** If necessary, the Architect/Engineer will furnish sufficient baselines and benchmarks to allow the Contractor to lay out the work. If the Contractor finds any errors or discrepancies or that any previously established references, lines or grades have been destroyed or misplaced, he shall promptly notify the Architect/Engineer.

10.19 **Construction Trailers.** With the approval of the City or Architect/Engineer, the Contractor may use construction trailers or other structures for housing men, tools, machinery and supplies as allowed or permitted by the City Inspector, but they will be permitted only at approved places and their surroundings shall be maintained at all times in a sanitary and satisfactory manner by the Contractor. On or before the completion of the work, all such structures shall be removed together with all rubbish and trash, at the expense of the Contractor.

10.20 **Coordination of Plans, Specifications, Etc.** The specifications, the plans, and all supplementary documents are essential parts of the Contract, and requirements occurring in one are as binding as though occurring in all. They are intended to be comprehensive to describe and provide a complete work. In case of discrepancy, figured dimensions shall govern.

10.21 **Corrections of Plans, Etc.** Should any portions of the plans and specifications be obscure or in dispute, they shall be referred to the Architect/Engineer and he shall decide as to the true meaning and intent. The Architect/Engineer shall also have the right to correct any errors or omissions at any time when such corrections are necessary for the proper fulfillment of said plans and specifications.

10.22 **Cutting, Patching, Etc.** Unless otherwise stated in the modification to this contract, the Contractor shall do all necessary cutting, fitting and patching of the work that may be required to properly receive the work so that its several parts may be joined together properly, receive and provide for the work of various trades, for the work to be received by the work of other Contractors, or as required by drawings and specifications to complete the work. After such cutting, he shall replace or restore or repair and make good all defective or patched work as required by the Architect/Engineer. He shall not cut, excavate or otherwise alter any work in any manner or by a method or methods that will endanger the work, adjacent property, workers, the public or the work of any other Contractor.

The Contractor shall check the location of all sleeves, openings, slots, etc., for the piping, ducts, breaching, conduits, louvers, grills, fans, etc., as they are laid out on the job.

Provisions for openings, holes and clearances through walls, beams, floors, ceilings and partitions shall be made and checked by the Contractor and/or his subcontractor in advance of constructing such parts of the work and unnecessary, superfluous or dangerous cutting shall be avoided.

Pipes passing through concrete or masonry walls shall be protected by pipe sleeves two sizes larger than the pipe plus its installation, to provide free movement.

Under no condition must structural, framing or other parts or members subjected to computed stress be cut or disturbed without the approval of the Architect/Engineer. Any plates, studs or joists, and/or rafters that are approved to be cut to execute necessary work must be securely strapped and braced to restore their strength by approved methods.

The Engineer/Architect's approval shall be obtained before cutting or drilling holes in concrete or masonry that might tend to damage or weaken the load capacity.

- 10.23 **Defective Work/Correction of Work by City.** The inspection of the work shall not relieve the Contractor of any of its obligations to fulfill its Contract and defective work shall be made good, notwithstanding that such work has been previously inspected by the Architect/Engineer and accepted or estimated for payment. The failure of the Architect/Engineer or inspector to condemn improper workmanship shall not be considered as a waiver of any defect, whether known at the time or discovered later, or as preventing the City at any time subsequently from recovering damages for work actually defective. All work shall be guaranteed against defects in workmanship for a period of one year from date of final payment.

The Contractor shall promptly correct work rejected by the Architect/Engineer or failing to conform to the requirements of the Contract Documents, whether observed before or after substantial completion and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting such rejected work, including additional testing and inspections and compensation for the Architect/Engineer's services and expenses made necessary thereby.

Upon failure and/or neglect by the Contractor to promptly prosecute or perform the work in accordance with the Contract Documents, including any requirements with respect to the construction schedule, plans or specifications, the City may, without prejudice to any other remedy it may have, correct such deficiencies and may deduct the actual cost thereof to the City from payment, then or thereafter due to the Contractor.

- 10.24 **Differing Site Conditions.** If, in the performance of the Contract, subsurface or latent conditions are found to be materially different from those indicated by the plans and specifications, or unknown conditions of an unusual nature are disclosed differing materially from conditions usually inherent in work of the character shown and specified, the Contractor shall call the attention of the Architect/Engineer to such conditions in writing immediately (in no event later than forty-eight (48) hours after discovery) describing the conditions, and other pertinent information. In no event shall said conditions be disturbed prior to the Architect/Engineer's acknowledgment of the conditions. Upon such notice, or upon such observation of the conditions, the Architect/Engineer will promptly make such changes in the plans and/or Specifications as he finds necessary (if any are necessary) to conform to the different conditions, and any increase or decrease in the cost of the Project resulting from such changes may be adjusted as provided under Change Orders or Claims for Extra Cost as set forth in the Contract documents.

- 10.25 **Disagreement.** Should any disagreement or difference arise as to the estimated quantities or classifications or as to the meaning of the drawings or specifications, or any point concerning the character, or acceptability or nature of the several kinds of work, or construction thereof, the decision of the Architect/Engineer shall be final and conclusive and binding upon the Contractor.
- 10.26 **Entire Agreement/Merger.** This contract, along with all appendices, exhibits, and attachments, or other documents attached hereto or referred to herein, embodies the entire agreement, intent, and understanding of the parties as to the transactions contemplated and evidenced hereby and merges herein all prior and/or contemporaneous agreements, covenants, discussions, representations, statements, and/or understandings heretofore made between the City and the Contractor as to such transactions, whether written, oral, or both. Any such prior and/or contemporaneous agreements, covenants, discussions, representations, statements, and/or understandings by and between the City and the Contractor as to such transactions not contained herein are and shall be null and void, unenforceable, and of no force and effect whatsoever.
- 10.27 **Errors and Omissions:** Neither the Contractor nor any subcontractor shall bring any claim or make any demand against the City or any of its officers, members, agents and employees for any damages resulting from or attributable in whole or in part to, errors in or omissions of the plans and specifications, including final drawings of the Architect/Engineer or other design professionals. The parties agree that any City review or approval of plans, specifications, drawings, and designs was only for overall suitability, maintenance and usability and there are no express or implied warranties by City as to the adequacy, accuracy, correctness, or code compliance thereof. Notwithstanding the foregoing, the Contractor reserves all rights to any claim for damages attributable to errors in or omissions of the plans and specifications against other third parties, including contracted consultants for the City, and Contractor further reserves its right to pursue remedies under this Contract against the City for payment due for services performed.
- 10.28 **Estimated Quantities.** The Contractor agrees that the Contractor shall consider the prices given in the Proposal as the quantities required for completion of the work. This is a lump sum bid and the quantities are subject to increase or decrease. The bidder understands this is an offer to perform the work whether the quantities are increased or decreased, at the lump sum bid price except where the Scope of Work changed. If the Scope of Work changes, then the lump sum price will be adjusted according to the unit bid price.
- 10.29 **Exclusion of Contractor Claims.** In performing its obligations, the Architect/Engineer and its consultants may cause expense for the Contractor or its subcontractors and equipment or material suppliers. However, those parties and their sureties shall maintain no direct action against the City or its officers, employees, agents and program coordinator for any claim arising out of, in connection with, or resulting from the engineering services performed or required to be performed where such services are performed in good faith to protect the City or the public.
- 10.30 **Extensions of Time.** All written requests for extensions of time must be submitted to Architect/Engineer within ten (10) days after the occurrence of the cause for delay unless this requirement is waived by the City. In no case shall a request for extension be made after the contracted completion date. The Architect/Engineer shall ascertain the facts and the extent of the delay and shall recommend to the City whether it should extend the time for completing the work. Any extension of time shall be processed as a change order, and submitted to the City Council for approval.

For change orders requesting extensions of time due to rain, wind, flood or other natural phenomenon, the Contractor's written request must be accompanied, at the City's request, by a detailed report of weather at this site for the last ten (10) years with averages showing means and statistical deviations from mean averages to support request for extension.

No extension shall be made for delays due to rain, wind, flood or other natural phenomenon of normal intensity for the locality and season.

In the event any material changes, alterations, or additions are made as herein specified, which in the opinion of the Architect/Engineer will require additional time for execution of any work under the contract, then in that case, the time of the completion of the work may be extended through change order. No extensions of time shall be given for any minor changes, alterations or additions. The Contractor shall not be entitled to any reparation or compensation on account of such additional time or extensions of time required for the execution of the work.

- 10.31 **Final Inspection.** Upon notice from the Contractor that its work is complete, the Public Works Director, the Architect/Engineer and/or other representatives of the City shall make a final inspection of the work or project and conduct test or tests if applicable. The Architect/Engineer shall notify the Contractor of all apparent and/or visible instances where its work fails to comply with the plans and specifications and Contract Documents, as well as any defects he may discover (punch list). The Contractor shall immediately make such alterations as are necessary to make the work comply with the plans and specifications and to the satisfaction of the Architect/Engineer.

Upon completion of all such repairs in a satisfactory manner, and when the Architect/Engineer has determined that the work or project is acceptable under the contract, including this provision and completion of publication and all other requirements of final payment as provided for in this agreement, then it shall issue a final certificate of payment to City stating that the balance is due the Contractor, less such amounts as may have been withheld by the City from time to time as provided in the Contract Documents. In recommending to the City that it make such final payment to the Contractor, the Architect/Engineer shall also issue a certificate of final acceptance wherein he shall recommend to the City that it accept the project and/or work as final and complete pursuant to the Contract Documents.

Verification, approval, inspection, final inspection, issuance of final acceptance, issuance of final certificate of payment, action or approval by the City upon the final certificate of payment or final acceptance shall not in any way relieve the Contractor of responsibility for faulty materials or workmanship.

The Architect/Engineer will receive and forward to the City for the City's review and records written warranties and related documents required by the Contract Documents and assembled by the Contractor.

All warranty or guaranty periods shall commence and start to run from the date of final payment by the City.

- 10.32 **Final Payment.** To the extent applicable, advertisement of notice of completion required prior to final payment shall be governed by the provisions of *Ala. Code* 39-1-1(d). The Contractor shall, immediately after the completion of the contract, give notice of said completion to the City and there shall be conducted a final inspection as herein provided, then the Contractor shall give notice by an advertisement in a newspaper of general circulation published in Madison County for a period of four (4) successive weeks. The advertisement shall advise interested parties to contact both the Contractor and the specific City representative. The City's representative shall be named along with his proper mailing address. In no instance shall a final payment be made

upon the Contract until the expiration of thirty (30) days after the completion of the same. Proof of publication of said notice shall be made by the Contractor to the City by affidavit of the Publisher and a printed copy of the notice published.

Upon completion and acceptance of all work required, but not until ten (10) days after advertisement of the completion has been published as required by law, the amount due the Contractor shall be paid upon presentation of the following and approval of final payment by the City Council:

- (a) A properly executed and duly certified voucher for final payment;
- (b) A release of all claims and claims of lien against the City arising under and by virtue of the Contract (if any such claims have been made);
- (c) Satisfactory evidence that all payrolls and all amounts due for labor and other indebtedness connected with the work, other than claims for damages for tort, have been fully paid and satisfied and that there are no outstanding claims or demands against the Contractor connected with the work other than claims or demands for which the City is authorized to withhold payment (release of liens).
- (d) Proof of advertisement as required by law.

10.33 Governing Laws and Regulations: The Contractor shall comply with the Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act, and the Antikickback Act, and the Contract Work Hours Standards Act (PL-91-54). Bidders will be governed by said law insofar as it is applicable. Not less than the minimum wage scale applying to Madison County shall be paid to all skilled, intermediate and unskilled labor employed under this contract.

The Contractors' attention called to the Davis Bacon Act requirements. Contractors shall pay laborers and mechanics employed on this project wages and fringe benefits determined by the Secretary of Labor to be prevailing for corresponding classes of employees employed on this project. Contractors shall maintain payrolls and basic records relating to payroll during the course of the work and preserve them for a period of three years thereafter for all laborers and mechanics working on the project, or as designated in the grant document. Contractors must ensure that all laborers and mechanics are paid on a weekly basis and must submit weekly certified payroll records to the City of Madison.

The advertisement, award, and prosecution of the Contract will be governed by Title 39 of the Alabama Code, as amended by Act No. 225 of the 1997 Regular Session of the Alabama Legislature and by other applicable laws and ordinances, as well as by the terms of the Contract Documents.

The attention of all bidders called to advertisement requirement immediately after the completion of the contract. The Contractor shall give notice of the completion by an advertisement in a newspaper of general circulation published within the City or county in which the work has been done, for a period of four (4) successive weeks. Contractor must provide the City proof of publication notice made by affidavit of the publisher and a printed copy of the notice published.

ATTENTION TO BIDDERS: The attention of all bidders called to the requirements and regulations of the U.S. Department of Energy. The projects, in this invitation, are funded by the U.S. Department of Energy (DOE) Energy Efficiency and Conservation Block Grant.

- 10.34 **Inadequate Surety/Insurance.** It is further mutually agreed between the parties hereto that if, at any time after the execution of this agreement, any of the surety bonds hereto attached for its faithful performance shall be deemed by the City to be unsatisfactory, or if for any reason such bond ceases to be adequate to cover the performance of the work, the Contractor shall, at its expense, within five (5) days after the receipt of notice from the City so to do, furnish an additional bond or bonds in such form and amount and with such surety or sureties as shall be satisfactory to the City. In such event no further payment to the Contractor shall be deemed to be due under this agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the City.

When changes in the scope of work by written order or change orders aggregate in an amount equal to ten percent (10%) of the total contract, including a change order or change orders, the bonds required by this Contract and the insurance coverage included under this heading shall be increased accordingly by the Contractor. Proof of coverage shall be established by endorsement to the original bond or policy or by re-issue of the original bond or policy to include the added coverage, or in accordance with any other acceptable policy with the surety or insuring company for increasing the coverage.

- 10.35 **Indemnity.** To the maximum extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the City, its officers, members, employees, and agents from all claims and losses, including attorney's fees and litigation costs arising out of property losses or health, safety, personal injury or death claims by the Contractor, its subcontractors of any tier, and their employees, agents, invitees or any other party regardless of the fault, breach of contract, or negligence of the City, excepting only such claims or losses that have been adjudicated to have been caused solely by the negligence of the City or the Architect/Engineer and regardless of whether or not the Contractor is or can be named a party in a litigation.

Contractor agrees to indemnify and/or reimburse the City for any fines, violations, charges, suits, or sums of money imposed by Alabama Department of Environmental Management (ADEM), Environmental Protection Agency (EPA), or any other administrative agency on the City for any un-permitted sewage, storm water, effluent or contaminant discharged as a result of or arising out of the work by the Contractor pursuant to this agreement.

- 10.36 **Independent Contractor.** The Contractor enters into this Contract with the City as an independent Contractor and, as such, agrees that neither the City nor its officers, agents, employees or inspectors shall be responsible for the acts or omissions of the Contractor, or any subcontractor, or any of the Contractor's or subcontractor's agents or employees, or any other persons performing any of the work pursuant to this Contract. The Contractor shall be solely responsible for controlling construction manner, means and techniques consistent with the Contract Documents, plans and specifications.

- 10.37 **Inspection, Generally.** The Contractor shall furnish the Architect/Engineer with every reasonable facility for ascertaining whether or not the work performed is in accordance with the requirements and intent of the Specifications and Contract. No work shall be done without suitable inspection by the Architect/Engineer or his representative. Payment for work or failure to reject any defective work shall not in any way prevent later rejection when such defect is discovered, or obligate the City to final acceptance. All work done when not in accordance with the plans, specifications and Contract will be rejected and, without cost to the City, shall immediately be removed and other work done in accordance therewith by the Contractor. If the Contractor fails to remove the work as above ordered, then the Architect/Engineer shall have the right and authority to stop the Contractor and his work at once and the City may correct the work as herein provided at the cost and expense of the Contractor.

10.38 **Inspection of the Project.** The Architect/Engineer, the City and its agents, any agency having jurisdiction, and their representatives shall have access at all times to the Project for inspection (including such records of the Contractor as may have bearing on the proper review and observation of the work) whenever it is in preparation or progress, and the Contractor shall provide proper facilities for such access and inspection. Said facilities should include such space as would be reasonably adequate to serve as a field office for representatives of the City, and of the Architect/Engineer, and as storage area for their equipment and supplies. Said space shall be heated and air conditioned.

Inspection is not acceptance and shall not constitute acceptance by the City.

All materials, workmanship, processes of manufacture, and methods of construction, if not otherwise stipulated in the specifications, shall be subject to inspection, examination, and test by the Architect/Engineer (or his duly authorized representative) at any and all places where such manufacture and/or construction are being carried on. The Architect/Engineer shall have the right to reject defective material and workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected, and rejected material shall be satisfactorily replaced with proper material without charge therefore, and the Contractor shall promptly segregate and remove the rejected material from the premises to an approved disposal site. Neither the presence nor absence of such inspectors nor the giving or failure to give such advice, direction or instruction in any manner relieve the Contractor from any Contract requirement or be construed as binding on the City in any way.

Neither the inspectors, nor the Architect/Engineer, will be authorized to revoke, alter, relax, or waive any requirements of the Contract Documents; to issue instructions contrary to the drawings and Specifications; nor shall they supervise and direct work for the Contractor, nor unreasonably interfere with the Contractor's operations beyond the extent necessary to make certain that the Project is being carried out according to the Contract requirements.

If the Contractor considers any work demanded of it to be outside the Contract requirements, or any record or ruling of the Architect/Engineer or an inspector to be unfair, it may immediately, upon such work being demanded or ruling made, request written instructions from the Architect/Engineer, or inspector, or within ten days file an appeal to the City stating clearly and in detail the basis of its objections. However, pending the decision on such appeal no work shall be done in disregard of the rulings of the Architect/Engineer or inspector or his instructions on items of work affected by such appeal.

The Contractor shall furnish promptly, without extra compensation, all reasonable facilities, labor, and material necessary for safe and convenient access, inspection, and tests that may be required by the Architect/Engineer.

10.39 **Insurance.**

- (a) **Worker's Compensation Insurance.** The Contractor shall take out and maintain during the term or any extensions of this Contract Worker's Compensation Insurance as required by Alabama law for all of its employees employed at the site of the project or off site related to the project and, in case any work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in any work under this Contract at the site of project is not protected under the Worker's Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate accident insurance for the protection of its employees not otherwise protected.

- (b) Comprehensive Automobile and Vehicle Liability Insurance. The Contractor shall maintain during the term or any extensions of this Contract comprehensive automobile and vehicle liability insurance naming the City, its officers, agents, and employees as additional insured. This insurance shall be written in comprehensive form and shall protect the Contractor and the City against claims for injuries to members of the public (including City employees) or damages to property of others (including City property) arising out of any act or omission to act of the

Contractor or any of its agents, employees or subcontractors and shall cover both on-site and off-site operations under this Contract and insurance coverage shall extend to any motor vehicles or other related equipment, irrespective of whether the same is owned, non-owned or hired.

The limits of liability shall not be less than \$300,000 combined single limit or equivalent.

The Contractor shall require subcontractors to take out and maintain the type of insurance required herein to the extent of their involvement in the project so as to be adequate to protect against liability.

- (c) Commercial General Liability Insurance. The Contractor shall maintain during the term or any extensions of this Contract commercial general liability insurance naming the City, its officers, agents, and employees as additional insured, including the City's and the Contractor's protective liability and blanket contractual liability coverage.

This insurance shall be written in comprehensive form and shall protect the City and the Contractor against claims arising from injuries to members of the public (including City officers, employees, and agents) or damage to property of others (including, but not limited to City property) including but not limited to that resulting from the operation of an elevator, material hoist, crane or other equipment, or conveyor if such equipment is operated on or in connection with the work under this contract, arising out of any act or omission to act of the Contractor or any of its agents, employees or subcontractors.

The limit of liability shall not be less than \$300,000 combined single limit or equivalent.

The coverage and limits of liability shall apply to explosion, collapse and underground operations.

This insurance shall provide blanket x, c, and u coverage.

The Contractor shall require subcontractors to take out and maintain the type of insurance required herein to the extent of their involvement in the project so as to be adequate to protect against liability.

- (d) Umbrella Excess Liability Over Primary Insurance. The Contractor shall take out and maintain during the term of this contract, and any extensions thereof, Umbrella Excess Liability Insurance. The minimum limits of coverage shall be as follows:

Each Occurrence: \$ 300,000 Aggregate: \$1,000,000

The coverage shall be over the required general liability insurance and automobile liability insurance as a minimum. There shall be no gaps or sub-limit deductibles, etc.

- (e) Miscellaneous Insurance. The Contractor shall provide for the City any insurance, permits or agreements utilities require the City to obtain or carry. The Contractor shall provide whatever insurance may be required of the City or the Contractor by permits or agreements, etc., with the railroad, highways, or other utilities. The Contractor shall

familiarize himself with all insurance requirements contained in easements, permits, and agreements associated with this project and provide such insurance. The Contractor shall provide any Railroad Protective Liability and other General Liability Insurance in the amounts contained in the agreements, permits or easements or in greater amounts if higher limits are appropriate or required elsewhere. The Contractor shall bear the cost of all required insurance and shall include in his bid a sufficient amount to cover the cost of all required insurance. To the extent the City obtains permits or licenses for railroad or highway bores, crossings or other work involved in the project, the Contractor shall obtain adequate insurance to protect itself and the City.

- (f) **Builders Risk Insurance.** To the extent applicable to the project, the Contractor shall secure and maintain during the life of this Contract, Builders Risk Replacement Cost Insurance in the amount of one hundred percent (100%) of the insurable value with the difference in conditions supplement. The difference in conditions supplement shall provide coverage in the same amount for earthquake, landslide, flood, collapse, or loss due to the results of faulty workmanship or design. Such coverage shall provide for losses to be paid to the Contractor and the City as their interests may appear, but only if the Contractor is not in default as to any conditions of the Contract. This coverage may be provided with a maximum of \$1,000 deductible; however, this shall not relieve the Contractor of the liability for this amount.

The City shall be named as additional insured on the Contractor's and any subcontractor's Builders Risk All Risk insurance policies for any claims arising out of work performed under this Contract.

This insurance shall include a waiver of subrogation as to the City, its officers, agents, employees and Program Coordinator, the Contractor, and their respective officers, agents, employees, and subcontractors.

The Contractor and all subcontractors shall waive all rights against the City for damages covered by the Builder's Risk Insurance provided for under the terms of this contract.

- (g) **Product Completion Insurance.** When deemed to be in the interest of the City, the City may require product completion insurance in an amount specified by the City and included in Supplemental Terms and Conditions made a part of the Contract documents.

10.40 Job Site Responsibilities. The Contractor shall, and will, in good workmanlike manner, do and perform all work and furnish all supplies, materials, machinery, equipment, utilities, facilities and means, except as otherwise expressly specified herein, necessary or proper and complete all the work required by this contract, within the time herein specified, in accordance with the provisions of this Contract and said specifications and in accordance with the plans and drawings of the work covered by this Contract and any and all supplemental plan and drawings, and in accordance with the directions of the Architect/Engineer as given from time to time during the progress of the work. He shall furnish, erect, maintain, and remove such construction plant and such temporary works as may be required. He alone shall be responsible for the safety, efficiency, and adequacy of his plant, appliances, and methods, and for any damage which may result from their failure or their improper construction, maintenance, or operation.

The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the Contract and specifications, and shall do, carry on, and complete the entire work to the satisfaction of the Architect/Engineer and the City. The Contractor shall have available on the job site, at all times, at least one (1) copy of plans and specifications if prepared for the project.

The Contractor shall give the work the constant attention necessary to facilitate the progress thereof and shall cooperate with the City, Architect/Engineer and with other Contractors in every way possible. The Contractor shall at all times have a superintendent, capable of acting as his agent on the work, who shall receive communications from the Architect/Engineer or his authorized representatives or the City's authorized representative. The superintendent shall have full authority to execute orders without delay and to promptly supply such tools, plant equipment, materials and labor as may be required.

The City reserves the right to utilize its own forces on the site or those of another Contractor and to communicate through its representative directly with the Contractor.

10.41 **Labor and Supervision.** The Contractor shall provide and pay for all labor and supervision necessary to execute, complete and deliver the work within the specified time. Any work necessary to be performed after the regular working hours, on Sunday or legal holidays, shall be performed without additional expense to the City, as otherwise herein provided.

10.42 **Laws and Regulations/Royalties, Patents and Copyrights.** The Contractor shall keep itself fully informed of all laws, ordinances and regulations of federal, state, City and county in any manner effecting those engaged or employed in the work, or the materials used in the work, or in any way affecting the conduct of the work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over same. If any discrepancy or inconsistency should be discovered in this contract, or in the drawings or specifications herein referred to, in relation to any law, ordinance, regulation, order or decree, it shall forthwith report the same in writing to the Architect/Engineer. It shall at all times, itself, observe and comply with all such existing and future laws, ordinances and regulations.

The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and code requirements applicable in or bearing on the conduct of the Project unless in conflict with Contract requirements. If the Contractor ascertains at any time that any requirements of the Contract is at variance with applicable laws, ordinances, regulations, or building code requirements, it has promptly notified the Architect/Engineer and any necessary adjustment of the Contract will be made as herein specified under change in orders. If the Contractor fails to promptly notify the Architect/Engineer of any such variance and performs work knowing it to be contrary to laws, statutes, ordinances, building codes, rules, or regulations, the Contractor shall assume full responsibility for such work and shall bear all attributable costs.

Wherever the law of the place of building requires a special tax, consumer, use, occupation, or other tax, the Contractor shall pay such tax.

The Contractor shall pay all royalties and license fees. The Contractor shall hold and save the City and its agents and employees harmless from liability of any nature or kind, including costs and expenses, for or on account of any patented or unpatented invention, process, article or appliance manufactured or used in the performance of the contract, including its use by the City.

If the Contractor has information that any process, article or item specified or delineated by the Architect/Engineer is an infringement of a patent or a copyright, it shall promptly give such information to the Architect/Engineer.

10.43 **Licenses, Permits, Fees.** The Contractor shall apply for and obtain, and cause its subcontractors to apply for and obtain, when applicable, all required licenses and permit, including without limitation privilege licenses, building permits, plumbing, electrical, mechanical, and gas permits, and swimming pool permits. Payment for all fees and charges required to obtain such licenses and permits, as well as payment of all other fees, including without limitation

impact fees, review fees, and aid to construction, shall be made by the Contractor, and the cost of the fees and charges shall be included in the bid price.

- 10.44 **Liquidated Damages.** Should the work under this Contract not be completed within the time specified or as extended, it is understood and agreed that there may be deducted by the City or Architect/Engineer from the partial and/or final payments to the Contractor or otherwise charged to the Contractor, a sum computed at the rate of **\$120.00 per calendar day** beginning from the stated or extended date of completion and continuing for so long as the project remains incomplete. It is understood and agreed that the above deduction is not a penalty, but money due to reimburse the City for extra cost and expense to the City, due to the delay in the completion of the work and is reasonable. The collection of liquidated damages by the City shall not constitute an election or waiver by the City of recovery of additional non-delay related damages from the Contractor.
- 10.45 **No Personal Liability of Public Officials.** In carrying out any of the provisions hereof or in exercising any authority granted by the Contract, the Contractor understands there will be no personal liability upon any public official or City employee and covenants that it will not seek to impose any liability on any such public official or City employee.
- 10.46 **Non-Discrimination.** The Contractor agrees that in performing the work and services as required herein under this agreement, not to discriminate against any person based on race, color, religion, sex, age or disability.

The Contractor must comply fully with the Americans with Disabilities Act and indemnity and hold harmless the City of Madison from all cost, including but not limited to damages as well as attorney's fees and staff time, in any action or proceedings brought alleging a violation of the Americans with Disabilities Act.

10.47 **Notice and Service Thereof.**

- (a) All notices, demands, change order requests, change orders, requests, instructions, approvals and claims shall be in writing.
- (b) Any notice to or demand upon the Contractor shall be in writing and shall be sufficiently given if addressed to the Contractor at the address stated in the proposal and deposited in the United States mail in a sealed envelope with sufficient postage prepaid or delivered with charges prepaid to any telegraph company for transmission to the Contractor at such address. It shall also be sufficient if such notice or demand be served upon the Contractor personally or his local representative in charge of the work or delivered at his local office. The Contractor shall, from time to time, designate to the City in writing any change of address to which such notice or demand shall be sent.
- (c) Any notice to or demand upon the City shall be in writing and shall be sufficiently given if delivered to the office of the City's representative or if addressed to the City and deposited in the United States mail in a sealed envelope with sufficient postage prepaid or delivered with charges prepaid to any telegraph company for transmission to the City, or to such representative of the City as the City may subsequently specify in writing to the Contractor for such purpose.

- 10.48 **Order of Precedence.** Should any discrepancy arise between the various elements of the Contract Documents, precedence shall be given the same in the following order:
- (a) Contract agreement
 - (b) Supplemental and special conditions (if attached)
 - (c) Modifications to Contract agreement (if attached)

- (d) General and detailed specifications (if attached)
- (e) Detailed Drawings (if attached)
- (f) Addenda (if issued)
- (g) Instructions to bidders
- (h) Invitation to bid
- (i) Notice to bidders
- (j) Contractor to furnish
- (k) Proposal

Where more than one document relates to the same matter the specific language will take precedence over the more general wording; however, where both may be given reasonable effect both are to be retained. Written specifications must take precedence over drawings.

10.49 Overtime Work by Contractor. If the Contractor for his convenience and at his own expense should desire to carry on his work at night or outside regular hours, he shall submit written notice to the Architect/Engineer and he shall allow ample time for satisfactory arrangements to be made for inspecting the work in progress. At no time must the notice be given less than 24 hours before such overtime work is started. The Contractor shall obtain, through the Architect/Engineer, the City's approval for work at night or on Saturdays or Sundays. The Contractor shall light the different parts of the project as required to comply with all applicable federal and state regulations and with all applicable requirements of the City.

Overtime hours must be considered any hours worked by the Contractor in excess of 8 hours during any working day and/or in excess of 40 hours from Monday through Saturday, and/or any time on Sunday and legal holidays.

If the Contractor elects to schedule and perform overtime work, the Contractor shall pay the owner for the owner's resident Inspector's salary costs for each hour of overtime work. Overtime must be rounded up to the nearest whole hour. Payment to the City must be made by a deduction from the Contractor's monthly payment invoice for any overtime worked.

10.50 Payments on Account/Payments Withheld. Within twenty (20) days after the City's receipt of certification from its Consulting Architect/Engineer, of acceptable completion of work for which payment is requested by the Contractor, the City shall make partial payment to the Contractor, less five percent (5%) of the value of the billable work performed, less payments already made, and less deductions for any incomplete, unaccepted or defective work. The City shall retain five percent (5%) of the amount of each payment until fifty percent (50%) of the work has been completed. The five percent (5%) retained from the first fifty percent (50%) of the work shall be retained by the City until final completion and acceptance of all work covered by the Contract Documents.

The City may also withhold from time to time payment to the Contractor such an amount or amounts as may be necessary to pay and fully satisfy all claims and demands for labor and services rendered in and about the work including any such amount or amounts due to be paid to or by any subcontractor, amounts for City's or Architect/Engineer's observers or inspectors for Contractors' overtime or for services required after the Contract completion date as herein provided, and the Contractor hereby authorizes the City as its agent, (for this purpose only) to apply such amounts so withheld to the payment of amounts so due to be paid and all other just and lawful claims other than claims for damages for tort. In case of disagreement with reference to any such claim or claims, the City may keep such amounts so withheld on account of such claim or claims until such disagreement is finally settled and determined.

In addition, the City may also withhold payment of the whole or any part of a verified or approved application for payment from the Contractor to such extent as may be necessary to protect itself from loss on account of any of the following causes discovered subsequent to its verification or approvals:

- (a) Defective work.
- (b) Evidence indicating probable filing of claims by other parties against the Contractor.
- (c) Failure of the Contractor to promptly make payments to subcontractors or for materials, labor, food stuffs and supplies provided pursuant to this contract.
- (d) Damage to another Contractor under separate Contract with the City.
- (e) Damage to property of third parties alleged to be the responsibility of the Contractor.
- (f) Assessment of liquidated damages.

When the above grounds are removed, applications for payment will then be verified and/or approved for amounts not previously verified and approved because of them.

The Contractor agrees not to withdraw at any time during the term of this Contract or any extensions thereof, without the express written consent of City, the whole or any part of the amounts so retained by City from payments due the Contractor by depositing with the City securities in lieu thereof, as authorized by *Ala. Code* 41-16-1, or any amendments thereto or any equivalent law, ordinance or regulation. It is expressly agreed between the parties hereto that should the City elect not to consent to such withdrawal of the retainage from payments due the Contractor, then the Contractor shall not elect to, attempt to or in any manner endeavor to withdraw such retained amounts.

10.51 Periodic and Final Cleanup. The Contractor shall periodically, or as requested during the progress of the work, clean up and remove from the premises, all refuse, rubbish, scrap materials and debris caused by its employees or its subcontractors resulting from its work, to the end that all times the premises are sanitary, safe, reasonably clean, orderly and workmanlike. Trash and combustible materials shall not be allowed to accumulate inside buildings or elsewhere on the premises. At no time shall any rubbish be thrown from window openings.

The Contractor shall comply with all municipal litter and construction site ordinances. (City of Madison Ordinance No. 91-65)

Before final completion and final acceptance, the Contractor shall remove from the City's property, rights-of-way or easements, and from all public and private property, all tools, scaffolding, false work, temporary structures and/or utilities, including the foundations thereof (except such as the City permits in writing to remain); rubbish and waste materials resulting from its operation or caused by its employees; and shall remove all surplus materials, leaving the site clean and true to line and grade, and the work in a safe and clean condition ready for use and operation. In addition to the above, the Contractor shall be responsible for the following special cleaning for all trades as the work shall have been completed:

- (a) Cleaning of all painted, enameled, stained or baked enamel work; removal of all marks, stains, fingerprints and splatters from such surfaces.
- (b) Cleaning of all glass; cleaning and removing of all stickers, labels, stains and paint from all glass and the washing and polishing of the same on interior and exterior.
- (c) Cleaning or polishing of all hardware.
- (d) Cleaning all tile, floor finishing of all kinds; removal of all splatters, stains, paint, dirt, and dust, the washing and polishing of all floors as recommended by the manufacturer or required by the Architect/Engineer.

- (e) Cleaning of all manufactured articles, materials, fixtures, appliances and equipment; removal of all stickers, rust stains, labels (except instructional and/or safety labels) and temporary covers and cleaning and conditioning of all manufactured articles, materials, fixtures, appliances, electrical, heating and air conditioning equipment as recommended or directed by the manufacturers, unless otherwise required by the Architect/Engineer; blowing out or flushing out of all foreign matter from all dust pockets, piping, tanks, pumps, fans, motors, devices, switches, panels, fixtures, boilers, similar features; and freeing identification plates on all equipment or excess paint and the polishing thereof.

In the case of failure to comply with the above requirements for any part of the work within the time specified by the Architect/Engineer, he may cause the work to be done and deduct the cost thereof from the Contract price on the next or succeeding application for payment, or in the event that the cost exceeds the balance due the Contractor, bill the Contractor for the excess.

- 10.52 **Progress Meetings.** The Contractor shall attend regular progress meetings during the course of the work as scheduled by the City and/or the Architect/Engineer. The meetings shall be held at a site convenient to all parties and if a site cannot be agreed upon, the City will designate a site.

The Contractor shall conduct regular progress meetings during the course of the work at least once a month or more often if requested by the City or the Architect/Engineer. The meetings shall be held at a site convenient to all parties, and if a site cannot be agreed upon, the City will designate a site.

The Contractor or designated representative, the Contractor's Superintendent, all subcontractors, engineers, inspectors, and City's representative shall attend.

The Architect/Engineer shall keep accurate written minutes of the meetings and forward copies thereof to the Contractor and the City's representative before the next scheduled meeting.

- 10.53 **Protection of Trees and Vegetation.** The Contractor shall protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site which are not required to be removed or do not unreasonably interfere with construction, as may be determined by the Architect/Engineer, and be responsible for all cutting or damaging of trees and shrubs or grassed areas, including damage due to careless operation of equipment, stockpiling of materials or equipment.

Care shall be taken by the Contractor in felling trees that are to be removed to avoid any unnecessary damage to vegetation or other trees that are to remain in place. Any limbs or branches unavoidably broken during such operations shall be trimmed with a clean cut and painted with an approved tree priming compound. The Contractor may be required to replace or restore back to like condition, at his own expense all vegetation not protected and preserved, as above required, that may be destroyed or damaged. The Contractor shall comply with all provisions of the Tree Preservation Ordinance of the City of Madison, if applicable.

- 10.54 **Protection of Utilities - Notice.** The Contractor shall notify the proper representatives of any public service corporation, any company or any individual providing water, sewer, gas, telephone, electric, cable or other utility services on public or private property adjacent to the work, not less than twenty-four (24) hours in advance of any work which might damage or interfere with the operation of their property, along or adjacent to the work.

- 10.55 **Protection of Work and Property.** The Contractor shall furnish and install all necessary temporary works for the protection of the project. The Contractor shall at all times adequately maintain, guard and protect his own work from damage, and safely guard and protect private, commercial, industrial, the City's and others' property from injury or loss arising in connection with

this Contract. He shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the City. He shall adequately protect adjacent property. Any damage to existing structures or the interruption of a utility service shall be repaired or restored promptly by and at the expense of the Contractor.

The Contractor shall store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other Contractor.

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the Contract Documents, and shall not unreasonably encumber the site with materials or equipment.

Necessary crossings of curbs, sidewalks, roadways or parkways shall be protected against damage and any damage shall be repaired by or at the expense of the Contractor.

The Contractor shall be responsible for all damage or injury to property of any character resulting from any act, omission, neglect or misconduct in the manner or method of executing the work or due to his non-execution of the work or at any time due to defective work or materials.

The Contractor shall indemnify and hold harmless the City from any damages on account of settlement or the loss of lateral support of adjoining property, and damages from changes in topography affecting drainage, and from all loss or expense, and all damages for which the City may become liable in consequence for such injury or damage to adjoining and adjacent structures and their premises.

10.56 **Recitals.** The recitals contained in this Contract are an integral part hereof, and by this reference are incorporated herein for all purposes.

10.57 **Release of Liens and Claims/Damages.** Neither final payment nor any part of the retainage under this Contract shall be due and payable until the Contractor, on behalf of itself and all major subcontractors, if required by the City, certifies to the City that it is prepared to deliver on receipt of such final payment, either an acknowledgement of receipt of payment in full or a complete release of all claims and/or liens arising out of the Contract. The receipts or releases shall be accompanied, if required by the City, with an affidavit that, so far as the Contractor has knowledge or information, the receipts or releases include all the labor and material for which a claim could be filed for the Contractor or any major subcontractor. However, if any subcontractor refuses to furnish a full receipt or release, the Contractor may furnish a bond satisfactory to the City to indemnify it against any claims. Delivery of all required receipts or releases to the City shall occur at or before the time final payment is made. If any claim remains unsatisfied after all payments are made, the Contractor shall refund to the City all monies that the latter may be compelled to pay in discharging such a claim, including all costs and a reasonable attorney's fee.

10.58 **Right of City to Terminate Contract.** If the Contractor should become insolvent or be adjudged as bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for the Contractor or any of its property, or if it should persistently or repeatedly refuse or fail to supply enough properly skilled workers or if it should

refuse or fail to make prompt payment to persons supplying labor for the work under the Contract, or persistently disregard instructions of the Architect/Engineer or fail to observe or perform any provisions of the Contract documents, or fail or neglect to promptly prosecute or perform the work in accordance with the Contract Documents or otherwise be guilty of a substantial violation of any provision of the Contract documents, then the City may, on giving at least five (5) days' written

notice to the Contractor, without prejudice to any other rights or remedies of the City in the premises, terminate the Contractor's right to proceed with the work. In such event, the City may take over the work and prosecute the same to completion, by Contract or otherwise, and the Contractor and its sureties shall be liable to the City for any and excess cost occasioned to the City thereby, including attorney's fees; and in any such case, the City may take possession of and utilize in completing the work such appliances and plant of the Contractor or its subcontractors as may be on the site work and necessary or useful thereof. Regardless, the City reserves the right to terminate this Contract should it determine it is in the City's best interest. In the event of termination, the same shall not relieve the Contractor or any of its sureties of their obligation pursuant to this agreement. In the event it becomes necessary for the City to maintain any legal action against the Contractor, to enforce its rights herein, the Contractor shall pay the City all expenses associated therewith including a reasonable attorney's fee.

10.59 Rights-Of-Way and Easements. The City will furnish all land and rights-of-way actually occupied for the work herein contemplated and will use diligence in acquiring said land and rights-of-way as speedily as possible. But it is possible that all lands and rights-of-way may not be obtained as herein contemplated before construction begins, in which event the Contractor shall begin his work upon such land and rights-of-way as the City may have previously acquired and no claim for damages whatsoever will be allowed by reason of the delay in obtaining the remaining lands and rights-of-way. Should the City be prevented or enjoined from proceeding with the work, or from authorizing its prosecution, either before or after the commencement, by reason of any litigation, or by reason of its inability to procure any lands or rights-of-way for the said work, the Contractor shall not be entitled to make or assert any claim for damage by reason of said delay except in extraordinary circumstances to be determined at the sole discretion of the City, or to withdraw from the Contract except by consent of the City; but time for completion of the work will be extended to such time as the City determines will compensate for the time lost by such delay, such determination to be set forth in writing. The Contractor shall not enter upon private property except rights-of-way or easements for any purpose without first obtaining written permission from its owner and lessees.

10.60 Safety Requirements. The Contractor shall provide and maintain all passageways, guard fences, lights, and other facilities required for protection by federal, state, or municipal laws and regulations or local conditions.

The Contractor shall take every precaution against injuries to persons or damage to property.

The Contractor shall not place upon the work or any part thereof, loads inconsistent with the design or safety of that portion of the work.

The Contractor shall take all necessary precautions for the safety of employees on the Project and shall comply with all applicable provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on or about or adjacent to the premises where the project is being performed. He shall erect and properly maintain at all times, as required by conditions, and progress of the Project, all necessary safeguards for the protection of workers and the public, and shall post danger signs warning against the hazards created by features of construction and the site, including all traffic control (signs, signals, and markings) provided for or recommended by the Alabama Manual of Uniform Traffic Control Devices.

Machinery, equipment and all hazards shall be guarded or eliminated in accordance with the State Accident Prevention in Construction provisions to the extent that such provisions are not in contravention of applicable laws.

In case of an emergency which threatens loss or injury of property and/or persons, the Contractor may act to prevent the same without previous or special instructions from the City or the Architect/Engineer, at his discretion, or if so instructed by the Architect/Engineer.

Any compensation claimed by the Contractor as extra work on account of emergency work, together with substantiating documents in regard to expense, shall be submitted to the City through the Architect/Engineer. The claim will be handled in accordance with the provisions for change orders.

- 10.61 **Sales & Use Tax.** Contractors are responsible for applicable taxes. Act 2004-638 repealed the contractor's exemption found in section 40-9-33 of the Code of Alabama effective July 1, 2004. Section 40-9-33 was not revived when the provisions of Act 2004-638 terminated on October 1, 2006.
- 10.62 **Sanitary Accommodations.** The Contractor shall provide and maintain such sanitary accommodations for the use of his employees and those of his subcontractors as may be necessary to comply with the requirements and regulations of the local and State Department of Health. At a minimum, necessary sanitary conveniences for the use of the laborers on the work shall be erected and maintained by the Contractor, in such a manner and at such points as shall be approved by the Architect/Engineer. Their use shall be strictly enforced.
- 10.63 **Severability.** If any term, part, provision, or condition of this contract, whether or not material to the bargain of the parties, should be declared illegal, null and void, unconstitutional, or otherwise unenforceable, in whole or in part, by any court of competent jurisdiction, the remainder of this Contract shall not be impaired and shall remain in full force and effect according to its terms, provisions, and conditions.
- 10.64 **Shop Drawings, Product Data, Samples.**
- (a) Shop drawings are drawings, diagrams, schedules, and other data specially prepared for the work by the Contractor or a subcontractor, sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the work. Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the work. Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the work will be judged.
 - (b) Shop drawings, product data, samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the work for which submittals are required the way the Contractor proposed to conform to the information given and the design concept expressed in the Contract Documents.
 - (c) These drawings shall show the principal dimensions of the materials or equipment to be furnished, foundation plans, and the number and position of all anchor bolts, together with the manufacturer's specifications, parts lists, descriptive literature, and operating instructions.
 - (d) The Contractor shall review, approve, and submit to the Architect/Engineer shop drawings, product data, samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the work or in the activities of the City or of separate Contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.
 - (e) The Contractor shall perform no portion of the work requiring submittal and review of shop drawings, product data, samples, or similar submittals, and no materials shall be

fabricated nor equipment shipped, until the respective submittal has been approved by the Architect/Engineer. Such work shall be in accordance with approved submittals.

- (f) By approving and submitting shop drawings, product data, samples, and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the work and of the Contract Documents.
- (g) Review of the drawings shall not relieve the Contractor for the correctness of all dimensions and for the correct fitting of all parts or for the satisfactory installation and operation in service of all materials and equipment as specified or for the requirement that the specifications and plans be satisfied and observed.

10.65 **Stop Work Orders.** The City in consultation with the Architect/Engineer shall have the authority to suspend the work wholly or in part, due to the failure of the Contractor to carry out provisions of the Contract; for failure to comply with requirements of the Architect/Engineer; due to unreasonable weather or conditions deemed unsuitable for prosecution of the work or for any other condition or reason deemed to be in the public interest. If the work is stopped, the Contractor shall not be entitled to extra compensation for delays or problems associated with the stoppage. Further, the right of the City to stop work shall not give rise to a duty on the part of the City to exercise the right for the benefit of the Contractor or any other person or entity.

10.66 **Sub-contractual Relations.** The Contractor shall require each subcontractor, to the extent of the work to be performed by the subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these documents, assumes toward the City and Architect/Engineer. Each subcontract agreement shall preserve and protect the rights of the City and Architect/Engineer under the Contract Documents with respect to the work to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the City. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with sub-subcontractors. The Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the subcontractor shall be bound, and upon written request of the subcontractor, identify to the subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors.

10.67 **Subletting or Assigning of Contract:**

- (a) **Limitations.** The Contractor shall not sublet, assign, transfer, convey, sell or otherwise dispose of any portion of the contract, his right, title or interest therein, or its power to execute such contract, to any person, firm or corporation without written consent of the City and such written consent shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the contract. Use of subcontracts will not be construed as an assignment.
- (b) **Subcontractor's Status.** A subcontractor shall be recognized only in the capacity of an employee or agent of the Contractor. All subcontractors shall be required by the Contractor to obtain and hold current valid licenses from the City of Madison during the subcontractor's participation in the project.

10.68 **Temporary Utility Services.** The Contractor, at its expense and in a manner satisfactory to the City, shall install and maintain all necessary temporary connections and distribution lines and

all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work, the Contractor shall remove all temporary connections, distribution lines, meters, and associated paraphernalia.

10.69 **Terms of Contract Agreement.** The terms of this Contract agreement shall control anything to the contrary in any of the other Contract Documents.

10.70 **Testing Services.** Contractor shall retain services of an independent testing laboratory, selected by the City, to perform tests and make required inspections and reports as specified in the various sections of specifications or as required by Architect/Engineer in case of questions as to strength or suitability of materials. Testing laboratories shall be responsible for conducting and interpreting tests, shall state in each report whether or not specimens tested conform to requirements of Contract Documents, and shall specifically note deviations, if any, from said requirements. Testing of piping and pressure vessels as specified under the mechanical section of the specifications shall be done by the Contractor and witnessed by the Architect/Engineer. Contractor shall pay for testing laboratory services. Contractor shall be responsible for coordinating work with requirements of the testing laboratories, and shall give testing laboratories timely notice of materials or work readiness for testing or inspection. The nature and scope of testing services performed shall be in accord with requirements of governing authorities having jurisdiction over work and as specified in the technical sections of the project manual, and shall be consistent with reasonable standards of engineering practice. The testing agency shall furnish copies of each test or inspection as follows: City: 1 copy; Architect/Engineer: 1 copy; Contractor: 2 copies. Contractor shall be responsible for any expenses incurred by testing laboratory as a result of Contractor's untimely notification for testing.

10.71 **Third-Party Beneficiaries.** It is the intent of the parties hereto that there shall be no third-party beneficiaries to this agreement.

10.72 **Time for Completion/Delays.** The Contractor hereby agrees to commence work under this Contract on or before the date to be specified in a written "Notice to Proceed" of the Architect/Engineer and to fully complete the project within **three (3) consecutive calendar months** thereafter. The Contractor further agrees to pay to the City, liquidated damages for each consecutive calendar day thereafter as hereinafter provided. The Contractor remains liable for damages caused other than by delay. Time is of the essence and a material element to this agreement.

Additional inspection costs, if any, resulting from failure to complete the project by the original contracted completion date shall be borne by the Contractor, unless otherwise specifically provided by change order. Payment of such inspection changes from the Contract sum may be made as provided in this contract.

A delay beyond the Contractor's control at any time in the progress of work resulting from strikes, embargoes, lockouts, fires, abnormal floods, tornadoes or other cataclysmic phenomenon of nature, may entitle the Contractor to an extension of time in which to complete the work as determined by the City provided; however, that the Contractor shall immediately give written notice to City and Architect/Engineer of the cause of such delay and follow extension of time procedures as provided herein.

10.73 **Time of Essence.** Time is of the essence for each and every provision, condition, and term of this agreement.

10.74 **Traffic Control.** The Contractor shall be solely responsible for traffic control as necessary in the vicinity of the project, including plan and devices. The traffic control plan and all traffic control

devices shall conform at a minimum to the current edition of the *Alabama Manual on Uniform Traffic Control Devices for Streets and Highways*, as revised. A copy of the said manual may be obtained from the Alabama Department of Transportation. Should the City or appropriate public authority determine a greater degree of traffic control is required, then the Contractor shall promptly provide same. The Contractor shall submit to the Public Works Director an adequate traffic control plan before commencing construction on any project which will impact traffic.

- 10.75 **Use of Explosives.** When the use of explosives is necessary for the prosecution of the work, the Contractor shall exercise the utmost care not to endanger life or property, including new work and the Contractor shall carry on such work in compliance with the applicable State and local laws and ordinances regulating the use of explosives. The Contractor shall be responsible for all damage resulting from the use of explosives.

Where explosives are stored or kept, they shall be stored in a secure manner in compliance with all State and local laws and ordinances. All such storage places shall be clearly marked, "Dangerous -- Explosives" and, in general, shall be located not closer than 1,000 feet from the work or from any building, road, or other place of human occupancy.

The Contractor shall notify each property owner and public utility company having structures or facilities in proximity to the site of the work of his intention to use explosives. Such notice shall be given sufficiently in advance to enable them to take such steps as they may deem necessary to protect their property from injury.

- 10.76 **Use of Section or Portion of Work.** Whenever, in the opinion of the Architect/Engineer, any portion of the work or structure is in suitable condition, it may be put into use upon the written order of the Architect/Engineer and such usage shall not be held to be in any way an acceptance of the work or structure or any part thereof as a waiver of any of the provisions of these specifications or contract. Pending final completion and acceptance of the work, all necessary repairs and renewals of any section of the work so put into use, due to defective material or workmanship, to natural causes other than ordinary wear and tear or to the operation of the Contractor shall be performed by, and at the expense of, the Contractor. Use or occupancy by the City will not constitute a waiver of the requirement in the preceding sentence.

- 10.77 **U.S. Products Preference.** The successful bidder (Contractor) shall comply with *Ala. Code* 39-3-1 by agreeing to utilize in the execution of the project, materials, supplies and products manufactured, mined, processed or otherwise produced in the United States or its territories, if the same are available at reasonable and competitive prices and are not contrary to any sole source specification implemented under *Ala. Code* 39-2-2(f). It is further stipulated that a breach of the foregoing provision of this agreement by the successful bidder or Contractor as the case may be, in failing to utilize domestic products where available at reasonable prices shall result in a downward adjustment in the Contract price equal to any realized savings or benefits to the Contractor.

- 10.78 **Waiver.** Waiver by the City to insist upon strict performance of any of the covenants, conditions, or promises of this Contract shall not be construed as a waiver or a relinquishment of any such covenant, condition, or promise.

- 10.79 **Warranty and Guaranty.**

Warranty: The Contractor warrants to the City and the Architect/Engineer that all materials and equipment furnished under this Contract will be new unless otherwise specified and that all work will be of good quality, free from fault and defects in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Warranties shall commence to run from the date of substantial completion.

The Contractor warrants good title to all materials, supplies, and equipment incorporated in the work and agrees to deliver the premises, together with all improvements thereon, free from any claims, liens, or charges, and agrees further that neither it nor any other person, firm, or corporation shall have any right to a lien upon the premises or anything appurtenant thereto.

Guaranty: If, within one (1) year from the date of final payment by City, any of the work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the City to do so, unless the City has previously specifically given the Contractor a written acceptance of such specific condition. This obligation shall survive termination of the Contract. The City shall give such notice promptly after discovery of the condition.

IN TESTIMONY WHEREOF, the said Contractor has hereto affixed its signature and said City of Madison has caused these presents to be executed by **Paul Finley, Mayor** of the City of Madison, and attested by **Melanie A. Williard, City Clerk-Treasurer**, on the day and year first above written.

(Please sign in **BLUE** ink)

CONTRACTOR:

Principal

By: _____

Title: _____

STATE OF _____)
COUNTY OF _____)
CITY OF _____)

I, _____ the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ is signed to the foregoing agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, he, as such _____ and with full authority executed the same voluntarily for and as an act of said _____.

Given my hand and seal this the _____ day of _____.

Notary Public in and for the State of _____ at Large
My commission expires: _____

**CITY OF MADISON, A MUNICIPAL
CORPORATION/CITY/OWNER**

Paul Finley, Mayor

ATTEST:

Melanie A. Williard, City Clerk-Treasurer

SECTION 11.0
PERFORMANCE BOND
BID NO. COM-15-11

STATE OF _____)
COUNTY OF _____)
CITY OF _____)

KNOWN ALL MEN BY THESE PRESENTS that we, _____, of _____ (hereinafter "Contractor"), as principal, and _____ (hereinafter "Surety"), as surety, do hereby acknowledge ourselves indebted and firmly bound and held unto the City of Madison, Alabama (hereinafter the "City") a municipal corporation in the State of Alabama, for the use and benefit of those entitled thereto, in the penal sum of _____ or the payment of which well and truly be made in lawful money of the United States, we do hereby bind ourselves, our successors and assigns and personal representatives, jointly and severally, firmly by the presents.

BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS:

WHEREAS, the City has entered into a certain written Contract with said Contractor for the _____ in accordance with Contract Documents therefore on file in the Office of the City Clerk-Treasurer, at the price of \$ _____, as more fully appears in said written Contract bearing the date of _____, which Contract is hereby referred to and made a part hereof to the same extent as if set out herein in full.

NOW, THEREFORE, if the Contractor shall fully and faithfully perform all the undertakings and obligations under the said agreement or Contract herein before referred to and shall fully indemnify and save harmless the said City from all costs and damages whatsoever which it may suffer by reason of any failure on the part of said Contractor so to do, and shall fully reimburse and repay the said City any and all outlay and expense which it may incur in making good any such default, and shall guarantee all workmanship against defects for a period of one year, this obligation or bond shall be null and void, otherwise it shall remain in full force and effect.

And, for value received it is hereby stipulated and agreed that no change, extension of time, alteration or addition to the terms of said agreement or Contract or in the work to be performed there under or the specifications accompanying the same shall in any wise affect the obligations of the principal or of the surety under this bond, and notice is hereby waived of any such change, extension of time, alternative of or addition to the terms of the agreement or Contract or to the work or to the specifications.

IN WITNESS WHEREOF, the said Contractor has hereunder affixed its signature and said Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers on the _____ day of _____.

(Please sign in **BLUE** ink)

Principal

By: _____

Title: _____

Surety_____

By: _____

Title: _____

ATTEST:

**SECTION 12.0
PAYMENT BOND
BID NO. COM-15-11**

KNOWN ALL MEN BY THESE PRESENTS that we, _____,
of _____ (hereinafter "Contractor"), as
principal, and _____ (hereinafter "Surety"), as
surety, do hereby acknowledge ourselves indebted and firmly bound and held unto the City of
Madison, Alabama (hereinafter the "City"), a municipal corporation in the State of Alabama, for
the use and benefit of those entitled thereto, in the penal sum of _____
for the payment of which well and truly to be made in lawful money of the United States, we do
hereby bind ourselves, or successors, assigns and personal representatives, jointly and
severally, firmly by these presents.

BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS:

WHEREAS, the City has entered into a certain written Contract with said Contractor for the
_____, in accordance with Contract Documents
therefore on file in the Office of the City Clerk-Treasurer, at the price of \$ _____,
as more fully appears in said written Contract bearing date of _____, 20____,
which Contract is hereby referred to and made a part hereof to the same extent as if set out
herein in full.

NOW, THEREFORE, if said Principal and all subcontractors to whom any portion of the work
provided for in said Contract is sublet and all assignees of said Principal and of such subcontractors
shall promptly make payment to all persons supplying him or them with labor, foodstuffs, or supplies
for or in the prosecution of the work provided for in such contract, or in any amendment or extension
of or addition to said contract, and for the payment of reasonable attorney's fees, incurred by the
claimant or claimants in suits on said bond, then the above obligation shall be void; otherwise, it
shall remain in full force and effect.

PROVIDED, however, that this bond is subject to the following conditions and limitations:

- (a) Any person, firm or corporation that has furnished labor, foodstuffs, or supplies for or in the
prosecution of the work provided for in said contract, payment for which has not been made,
shall have a direct right of action in his or their name or names against the principal and
surety on this bond, which right of action shall be asserted in a proceeding, instituted in the
county in which the work provided for in said Contract is to be performed and in any county in
which said Principal or Surety does business. Such right of action shall be asserted in a
proceeding instituted in the name of the claimant or claimants for his or their use and benefit
against said Principal and Surety or either of them (but not later than one year after the final
settlement of said Contract) in which action such claim or claims shall be adjudicated and
judgment rendered thereon.
- (b) In addition to any other legal mode of service, service of summons and other process in suits
on this bond brought in Madison County may be had on the Principal or the Surety by leaving
a copy of the summons and complaint or other pleading or process, with the Mayor of the
City of Madison; and the Principal and Surety agree to be bound by such mode of service
above described and consents that such service shall be the same as personal service on
the Principal or Surety.

- (c) The Surety shall not be liable hereunder for any damages or compensation recoverable under any worker's compensation or employer's liability statute.
- (d) In no event shall the Surety be liable for a greater sum than the penalty of this bond, or subject to any suit, action or proceeding thereon that is instituted later than one year after the final settlement of said contract.
- (e) This bond is given pursuant to the terms of *Ala. Code* 39-1-1 and all the provisions of law with reference to this character of bond as set forth in said section or as may hereinafter be enacted are hereby made a part hereof to the same extent as if set out herein in full.

IN WITNESS WHEREOF, the said Contractor has hereunder affixed its signature and said Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers on the _____ day of _____, 20_____.

(Please sign in **BLUE** ink)

Principal

By:

Title

Surety

By:

Title

ATTEST:

DATE:

**CHANGE
ORDER
REQUEST**

ARCHITECT/ENGINEER:

CONTRACTOR:

THE CITY OF MADISON

PROJECT:

CHANGE ORDER REQUEST NUMBER:

1. DESCRIPTION OF CHANGE:

2. CHANGE ORDER COSTS:

Proposal Attached

Cost Estimated/Proposal Required

ITEM	QUANTITY	MATERIAL UNIT PRICE	LABOR (Hours)	LABOR UNIT PRICE	SUBTOTAL COST
a.					
b.					
c.					
d.					
e.					
f.					

*(If more than 6 items, provide attachment.)

TOTAL:

3. INSTITUTED BY:

4. JUSTIFICATION OF NEED:

5. JUSTIFICATION OF CHANGE ORDER VERSUS COMPETITIVE BIDDING:

6. THIS CHANGE IS SUBMITTED FOR REVIEW AND APPROVAL AND IS CLASSIFIED AS THE FOLLOWING TYPE:

- _____ Minor change of a total monetary value less than required for competitive bidding.
- _____ Changes for matters relatively minor and incidental to the original Contract necessitated by unforeseeable circumstances arising during the course of work.
- _____ Emergencies arising during the course of work.
- _____ Change or alternates provided for in the original bidding where there is no difference in price of the Change Order from the original best bid on the Alternate.
- _____ Change of relatively minor items not contemplated when the plans and specifications were prepared and the project was bid and which are in the public interest and do not exceed 10% of the Contract Price.

7. EXTENSION OF TIME REQUESTED: Calendar Days: _____

(Please sign in **BLUE** ink)

REQUESTED:

BY: _____
Contractor

BY: _____
Consulting Architect/Engineer

APPROVED: CITY OF MADISON

BY: _____
Project Manager

BY: _____

REVIEWED:

BY: _____
City Attorney

Date: _____

THE CITY OF MADISON, ALABAMA

CONTRACT CHANGE ORDER

CHANGE ORDER NO. _____

DATE: _____

PROJECT: _____

TO: _____

TERMS: You are hereby authorized, subject to the provisions of your Contract for this project, to make the following changes thereto in accordance with the attached Change Order Request and supporting documents and to FURNISH the necessary labor, materials, and equipment to:

(Description of work to be done or changes to be made)

TOTAL ADDITION OR DEDUCTION TO CONTRACT PRICE

(Note: Numbers in parentheses are deductions.)

ORIGINAL CONTRACT PRICE: \$ _____

For this Change \$ _____

Net total of previous Change Orders: \$ _____

Previous revised Contract Price: \$ _____

Revised Contract Price this date: \$ _____

Extension of time resulting from this Change Order _____ (indicated number of calendar days).

The amount of this Change Order will be the responsibility of _____.

This Contract modification constitutes full and mutual accord and satisfaction for all time and all cost related to this change. By acceptance of this Contract Modification, the Contractor hereby agrees that the modification represents an equitable adjustment to the Contract, and further agrees to waive all right to file any further claims or changes arising out of or as a result of this change, or the accumulation of executed Contract Modifications on this Contract.

The Contractor and City hereby agree to the terms of this Change Order as contained herein.

(Please sign in **BLUE** ink)

CONSENT OF SURETY

(Company)

By: _____

CONTRACTING PARTIES

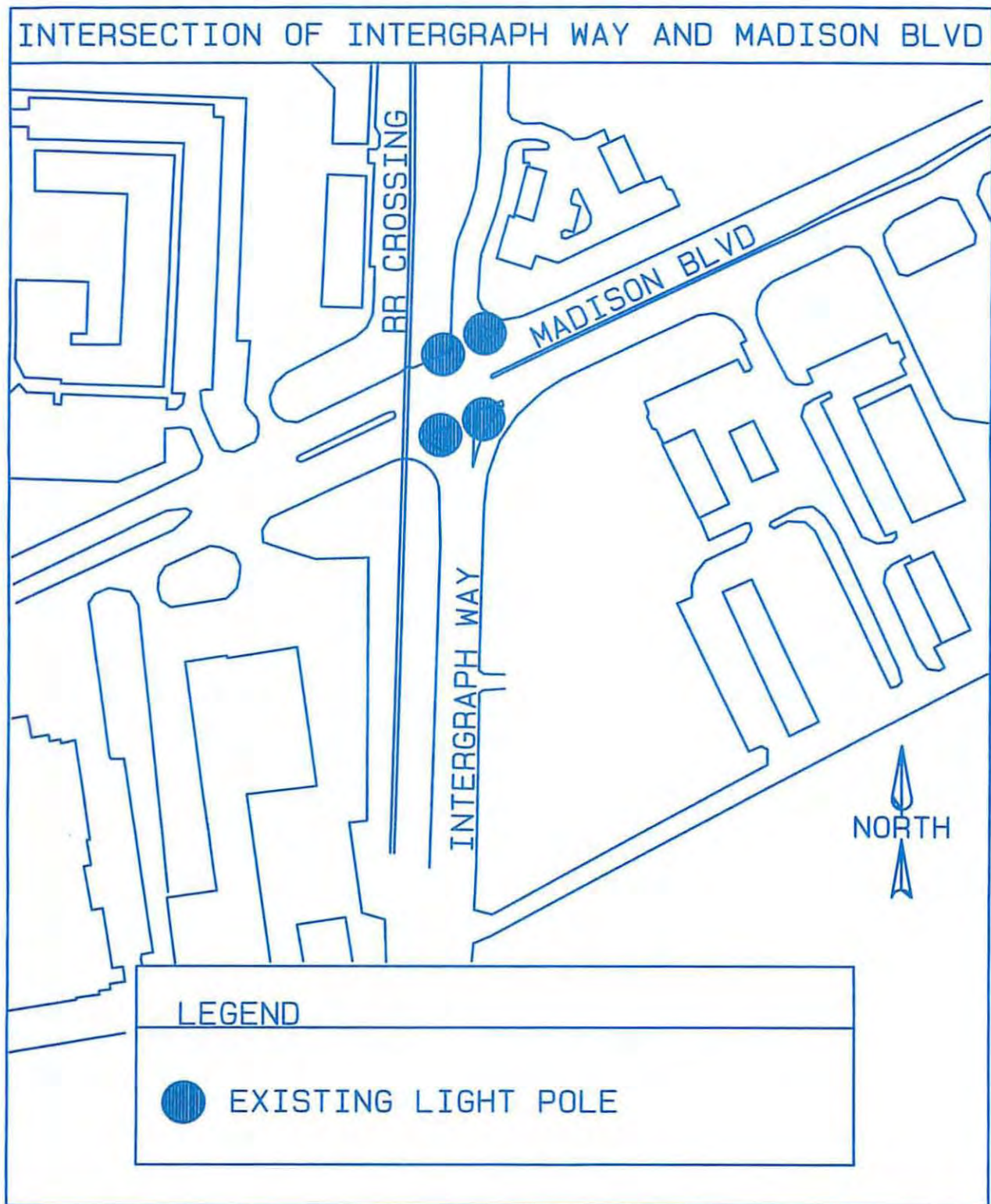
(Contractor)

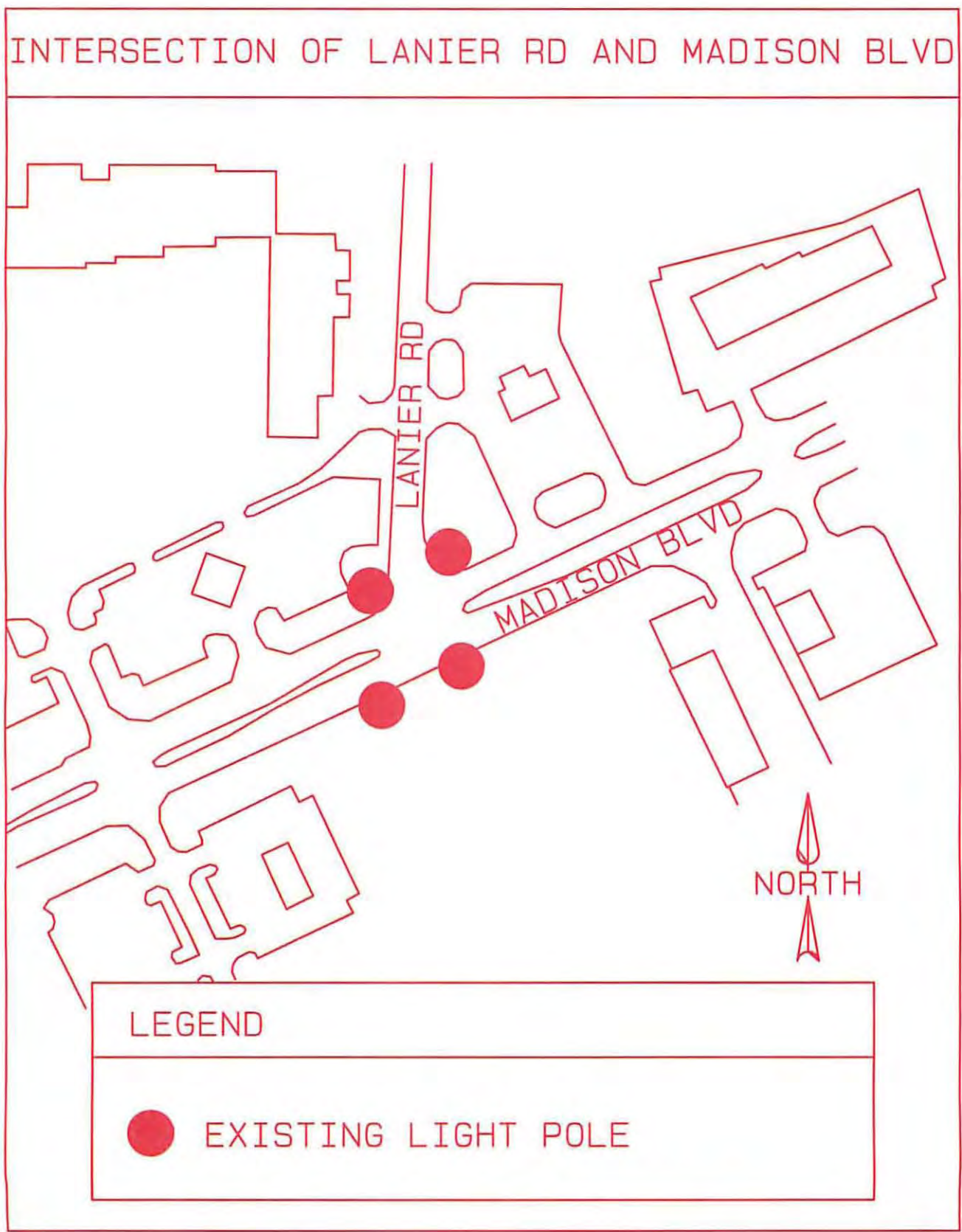
Mayor, City of Madison, Alabama

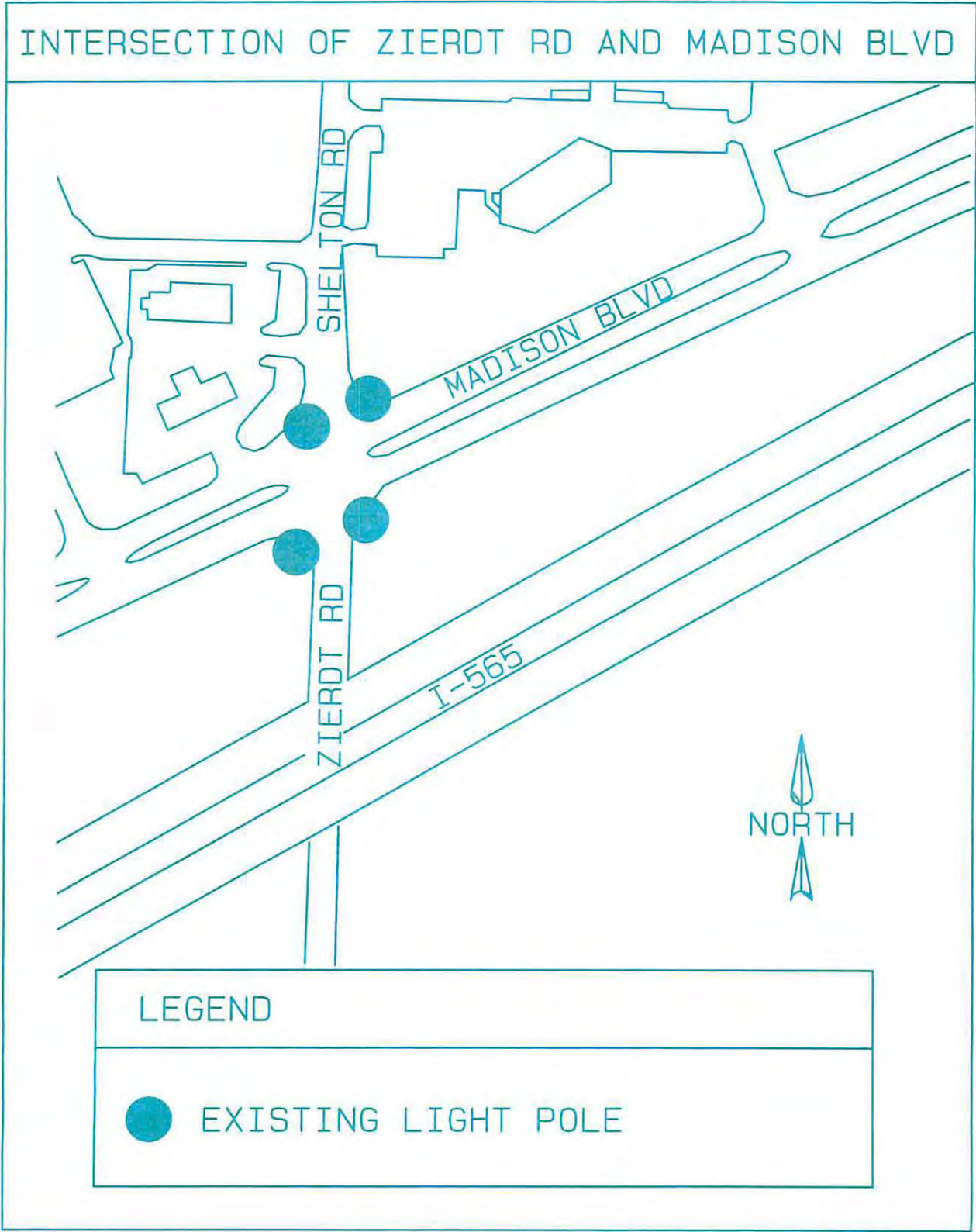
RECOMMENDED:

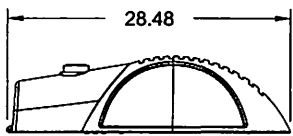
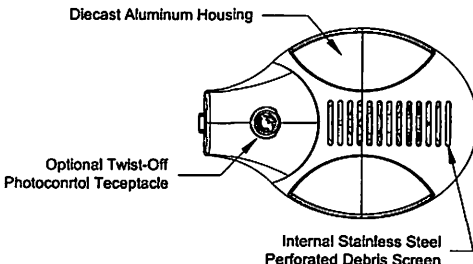
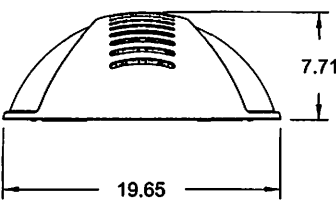
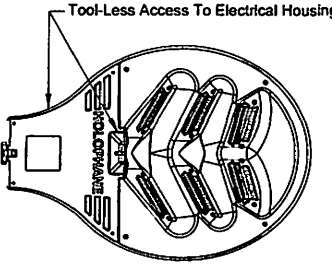

By: _____
(Design Architect/Engineer)

By: _____
Project Manager







	<p>Weight = 28lbs EPA = .62</p>		LEDGEND™ LED Roadway Lighting										
		Functional Outdoor											
<p>Customer Preferred: (Most Frequently Ordered Catalog Numbers) LEDG 120 35 4K AS 2 G L1 R F1 K L2 W</p>													
<table border="0" style="width: 100%;"> <tr> <td style="text-align: center; width: 25%;"> LEDG Series LEDgend LED Roadway </td> <td style="text-align: center; width: 25%;"> 120 Number of LED'S 120 = 120 LED'S 072 = 72 LED'S 036 = 36 LED'S </td> <td style="text-align: center; width: 25%;"> 35 Drive Current 35 = 350mA Driver 53 = 525mA Driver 70 = 700mA Driver </td> <td style="text-align: center; width: 25%;"> 5K Color Temperature 4K = 4,000 K CCT +/- 250K 5K = 5,000 K CCT +/- 250K </td> </tr> </table>				LEDG Series LEDgend LED Roadway	120 Number of LED'S 120 = 120 LED'S 072 = 72 LED'S 036 = 36 LED'S	35 Drive Current 35 = 350mA Driver 53 = 525mA Driver 70 = 700mA Driver	5K Color Temperature 4K = 4,000 K CCT +/- 250K 5K = 5,000 K CCT +/- 250K						
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Specifications

General Construction

Rugged die cast aluminum housing, low copper aluminum, allow for corrosion resistance and long life. Horizontal arm mount with +/-6 degrees vertical adjustment. Four bolt mast arm provides easy, secure installation and adjustability for arms 1 1/4 to 2" (1.25- 2.375 inch OD) Trigger latch disengages for easy access to four bolt mounting, terminal block, surge protection module, LED drivers, and electronic transfer switch. An optimized maintained thermal management system is achieved by combining a robust heat sink utilizing both convection and conduction methodology with a mechanical design that provides maximum airflow ensuring a minimum of 80,000 hours L70 at 40C operating ambient. Internal perforated stainless steel cover protects the luminaire against dirt and foliage build up while maintaining the integrity of the airflow requirement. Solar guard technology isolates top cover of luminaire from thermal heat sink through four touch points providing protection from solar loading while not in operation.

Environmental

Luminaire design and tested to comply with ANSI C136:31 2001 for 100,000 cycles at 3G acceleration for normal road and bridge applications. The range of luminaire operation is -40C to +40C. Six sealed LED light engines meet dust and moisture rating of IP-66 per IEC 600529-1999 which ensures long component life and protection from the environment.

The luminaire is finished with polyester paint applied after a pretreatment process to ensure maximum durability. The finish shall pass the 1000 hour salt fog test per ASTM B117 and D1654 standard. The luminaire passed Humidity testing per IEC 60068-2-3 1987 and passed Temperature-Voltage Cycling and Condensing Humidity testing per Acuity Brands Validation Test Specification 902-00007-001

Regulatory

The luminaire is designed to meet CSA-C22.2 number 250 for 40C, wet location. The luminaire is ROHS compliant. Luminaire meets EMI compliance per FCC Title 47 CFR Part 15, Class A.

Electrical

The surge protection device is designed to meet ANSI/IEEE62.41-2002 for category C high. This specification requires the device to meet a 10kV, 5kA surge level. The surge protection module (SPD) protects all downstream electronics such as Led drivers, transfer switch, and relays for the purpose of protecting from electrical disturbances such as nearby lightning strikes.

Solid state electronic drivers are multi volt 120-277, 347-480 and have rated life of 50,000 hours. Extended life driver option (EL) provides both main and auxiliary driver system extending system driver to 100,000 hours minimum. The control in EL option constantly monitors an output current of the Main Driver. In the event of a Main driver failure (no output current), the control switches power to the Auxiliary driver. The Auxiliary driver is not energized during normal operation. In the event of power interruption (longer than few line cycles) the control will reset and will start up in the Main driver mode monitoring the main driver output current. If no current is sensed on the Main driver output, the control will switch power to Auxiliary driver. The control will "ride through" very short power interruptions (10 line cycles or less) without change in operation.

In the event of brown out the control will not change operation unless the line voltage drops below 25-30V. If the voltage drops below 25-30V, the controls behavior will be same as during power interruption. The photocontrol receptacle is adjustable without tools and is ROAM compatible. The luminaire is designed to conform to ANSI C82.77:2002 for Maximum Total Harmonic Distortion (THD) -20%. Inrush current complies with NEMA410:2004 table B-2 and line Fluctuations and Ramp Input voltage per UL 991:2004. The luminaire conforms to Electromagnetic compatibility tests for Electrostatic Discharge (ESD) per IEC 61000-4-2:2001, Level 4.

Optical

Environmentally friendly, zero uplight luminaire reduces light pollution. Glass optics provides minimal dirt depreciation and will not discolor or become brittle over time. The permanence of glass results in less dirt depreciation and more maintained lumens on the intended space. The luminaire is available with narrow, medium, and wide asymmetric distributions designed to maximize pole spacing and reduce energy usage resulting in a lower total cost of ownership. The highly engineered light engine is designed to restrict direct view of individual LED's increasing visual comfort within the field of view. The luminaire is available with LED color temperatures ranging between 4000K-6000K.

Reference www.Holophane.com for individual photometric tests on LEDgend LED luminaire that are tested per LM79 guidelines. Consult factory for LM80 data as that varies per LED chip manufacturer.

Warranty

Five year limited warranty on LED light engine. Five year limited warranty on LED drivers. Five year limited warranty on non electrical components.

LEDGEND™
LED Roadway Lighting

**Functional
Outdoor**

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LEADER IN LIGHTING SOLUTIONS
An Acuity Brands Company
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ORDER #:
TYPE:
DRAWN: KRW
DATE: 03/09/11
DWG #: LUM_LEDG

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Operating Characteristics

Number of LED'S	CCT**	Drive Current	Min Delivered lumens*	Voltage	AMPS	Input Watts	LPW	L70 @ 25C	L70 @ 40C
120	5000K,6000K	350mA	9652	120	1.07	129	75	105,000	80,000
120	5000K,6000K	350mA	9652	208	.63	129	75	105,000	80,000
120	5000K,6000K	350mA	9652	240	.55	129	75	105,000	80,000
120	5000K,6000K	350mA	9652	277	.48	129	75	105,000	80,000
120	5000K,6000K	350mA	9652	347	.37	131	74	105,000	80,000
120	5000K,6000K	350mA	9652	480	.27	131	74	105,000	80,000
72	5000K,6000K	350mA	6005	120	.68	81	74	135,000	98,000
72	5000K,6000K	350mA	6005	208	.40	81	74	135,000	98,000
72	5000K,6000K	350mA	6005	240	.36	81	74	135,000	98,000
72	5000K,6000K	350mA	6005	277	.32	81	74	135,000	98,000
72	5000K,6000K	350mA	6005	347	.23	84	71	135,000	98,000
72	5000K,6000K	350mA	6005	480	.18	84	71	135,000	98,000
36	5000K,6000K	525mA	4241	120	.52	62	68	115,000	87,000
36	5000K,6000K	525mA	4241	208	.31	62	68	115,000	87,000
36	5000K,6000K	525mA	4241	240	.27	62	68	115,000	87,000
36	5000K,6000K	525mA	4241	277	.25	62	68	115,000	87,000
36	5000K,6000K	350mA	3060	120	.35	42	73	170,000	120,000
36	5000K,6000K	350mA	3060	208	.22	42	73	170,000	120,000
36	5000K,6000K	350mA	3060	240	.19	42	73	170,000	120,000
36	5000K,6000K	350mA	3060	277	.18	42	73	170,000	120,000

* Minimum lumen values, reference photometric test for delivered lumens for each distribution

** For 4000K use .94 multiplier X 5000, 6000 K lumen Value

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Lamp Lumen Depreciation Factors

The tables below reflect lumen depreciation factors at both 25C and 40C operating temperatures at specified operating hours

LEDgend 120 LED 350mA	25C	40C
L70 life (hours)	105,000	80,000
12,500 hours	.93	.88
25,000 hours	.88	.85
50,000 hours	.83	.78
75,000 hours	.78	.72
100,000 hours	.72	.67

LEDgend 036 LED 525mA	25C	40C
L70 life (hours)	115,000	87,000
12,500 hours	.96	.93
25,000 hours	.92	.88
50,000 hours	.87	.72
75,000 hours	.81	.73
100,000 hours	.74	.67

LEDgend 072 LED 350mA	25C	40C
L70 life (hours)	135,000	98,000
12,500 hours	.95	.91
25,000 hours	.92	.88
50,000 hours	.88	.83
75,000 hours	.83	.76
100,000 hours	.77	.69

LEDgend 036 LED 350mA	25C	40C
L70 life (hours)	170,000	120,000
12,500 hours	.97	.93
25,000 hours	.95	.91
50,000 hours	.91	.86
75,000 hours	.87	.81
100,000 hours	.83	.75
125,000 hours	.77	.69
150,000 hours	.74	.65

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TYPE:
DRAWN: KRW
DATE: 03/09/11
DWG #: LUM_LEDG

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KOMETA™ - High Performance Roadway Luminaire

The Next Generation of Lighting



Specification:

- LED Driver Constant Current Type	Electronic - Class 1
- Start Method	InstantON
- Hot Re-start	InstantON
- Universal Input Line Voltage	120V thru 277V \pm 10%
- Input Line Frequency	50/60 Hz
- Lamp Life	50,000 Hrs.
- Lumen Maintenance @50,000Hrs	> 92%
- Color Temperature	4100°K, 5000°K, 6000°K
- Color Rendering Index (CRI)	70 Minimum
- Minimum Operating Temperature	- 50°C
- Maximum Ambient Temperature	+ 50°C
- Case temperature rating	-40°C to 60°C
- Power Factor	> 90% @ full load
- Total Harmonic Distortion	< 20% @ full load
- Output Ripple	< 10%
- ETL Listed, CE Certified	Yes
- FCC Compliance	Yes
- Output is Isolated from system	Yes

Applications, Features, and Benefits

- Zero Light Pollution (ZLP) design - Dark Sky Compliant Full Cut-off with Type II and Type III Light Distribution
- Heat and impact resistant tempered glass lens/anti-glare diffuser
- Die-cast aluminum housing with electrocoat gray paint - 5 year warranty
- Meets ASTM Standard B 117 elevated ambient salt fog endurance (5,000 hrs) test.
- LED Driver/Power Supply Life rating 100,000 hours minimum
- InstantON(TM) flicker-free Cold Start and Hot Re-Start with an Lsub70 Life Rating of 100,000 hours minimum at 15°C per IESNA-LM-80-08.
- High Power Factor, Low THD Driver fully encased and potted with overheat protection, self limited short circuit protection and overload protection. Meets ANSI standard 62.41.2 and has been tested in accordance with IEEE C62.41 for 9k minimum integral surge protection
- Concealed continuous gasket seals against harmful dust, dirt, moisture and insects - ETL Listed for Wet Locations, IP66 per IEC529, RoHS Compliant. Meets CALTrans 611 vibration and GR-63-CORE (section 4.4.1/5.4.2 Earthquake zone 4) testing.
- 5 Year Warranty on complete fixture (LED's, Driver, Electrical components)
- Slim, state of art, low profile design for minimum wind load resistance designed to mount on 1-1/2" IP to 2-3/8" IP with \pm 5 degree adjustable function and bubble level for easy installation. Tool less entry with power terminal block accepting up to #6 AWG.
- Optional :
 - Twist lock receptacle Light Detector (LD) - Dawn to Dusk ON/OFF control NEMA Photocell, utility option (UTL)
 - Microwave Motion Control: a) ON/OFF; or b) Bi-Level Dimming 100% / 50%
 - Back Light Shield per IESNA luminaire classification

Product Information

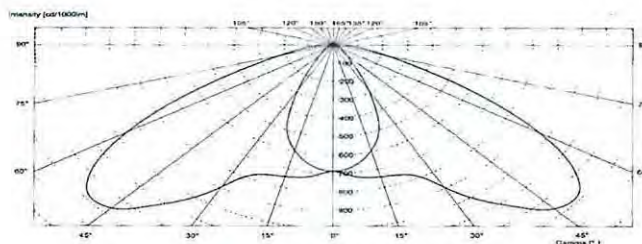
Item No.	Description	Watts	Initial Delivered Lumens	Line Voltage Supply	Drive Current	Minimum Lumens per Watt (lm/w)	Power Factor	Packaging Dimensions		
								Width	Length	Height
LED-45080-UNV	80W LED Roadway Fixture	80	5,600	120-277 VAC	525mA \pm 10%	63 lm/w at 525mA	>0.90	16.0 in. 400 mm	32.0 in. 800 mm	7.0 in. 180 mm
LED-45100-UNV	100W LED Roadway Fixture	100	7,000	120-277 VAC	525mA \pm 10%	63 lm/w at 525mA	>0.90	16.0 in. 400 mm	32.0 in. 800 mm	7.0 in. 180 mm
LED-45130-UNV	130W LED Roadway Fixture	130	9,100	120-277 VAC	525mA \pm 10%	63 lm/w at 525mA	>0.90	16.0 in. 400 mm	32.0 in. 800 mm	7.0 in. 180 mm

* Voltage: UNV = Universal Input - from 120V to 277V AC

** Listed Maximum wattage includes driver loss

*** Listed characteristics: Fixture operating @ 25°C

Type III



NEPTUN Light, Inc.
Questions and Comments:
service@neptunlight.com
Toll-Free: 1-888-735-8330

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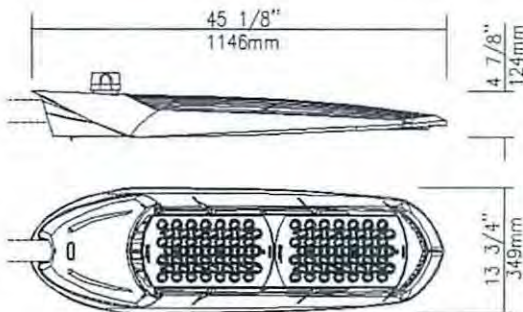


NEPTUN



Revision Date: March 31, 2010

Philips Roadway - City of Madison Madison Boulevard /Wall Triana (60718)



EPA: 1.1 sq ft / weight: 31 lb (14.09 kg)
Note: 3D image may not represent color or option selected.
Logos above include link, click to access.

	Qty	4	Type Luminaire	1 GPLM-180W98LED4K-LEH3-277-PH8-NP-LMS52844A
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Description of Components:

Housing: the upper and lower part of the housing are made of die cast A360 Aluminum alloy 0.100 (2.5mm) minimum thickness. The mounting means includes two brackets made of stamped galvanized-steel (12ga.). Fits on a 1.9" (48mm) to 2 3/8" (60mm) OD by 7" (178mm) long tenon, fixed by 1/2-13 UNC steel zinc plated bolts. An integral part of the housing permits an adjustment of +/- 5°. The housing is complete with a secured access door avoiding accidental dropping, a ground lug and a terminal block that accepts (#8 max.) wires from the primary circuit.

Light Engine: LifeLED™ composed of 4 main components: **LED lamp / Optical System / Heat Sink / Two Drivers**
Electrical components are RoHS compliant. Shape and optical system patents pending.

Lamp: (Included), Composed of 98 high performance white LEDs, 180w lamp wattage. Color temperature of 4000 Kelvin nominal, 70 CRI. Operating lifespan, 70 000 hours after which the system emits 70% of its original lumen output, all of those parameters are tested for 100% of light engines. Use of a metal core board insures greater heat transfer and longer lifespan of the light engine

Optical System: (LEH3), I.E.S type III (asymmetrical) Hyper Extensive. Composed of high performance collimators, optimized with varying acrylic beam angles to achieve desired distribution. System is rated IP65. Performance shall be tested per LM63 and LM79 (IESNA) certifying its photometric performance. Dark Sky compliant.

Heat Sink: Built-in the upper housing, optimising the LEDs efficiency and life. Product do not use any cooling device with moving parts (passive cooling device)

Driver: High power factor of 99%. Electronic driver, operating range 50-60 Hz. **Auto-adjusting to a voltage between 120 and 277 volt AC, Class II, THD of 20%.** Maximum ambient operating temperature from -40F(40C) to 130F(55C) degrees.

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PHILIPS
LUMEC
640, Curé-Boivin
Boisbriand (Québec)
Canada, J7G 2A7

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Lamp starting capacity -40F(-40C) degrees. Certified in compliance to CUL requirement. Weather tightness rating IP66. Assembled on a unitized removable tray with Tyco quick disconnect plug resisting to 105F(40.5C) degrees, located in a separate enclosure in order to protect from heat generated by the LEDs.

The current supplying the LEDs will be reduced by the driver if the internal temperature exceeds 203F(95C), as a protection to the LEDs and the electrical components. Output is protected from short circuits, voltage overload and current overload. Automatic recovery after correction.

Surge Protector: LED Driver 3 poles surge Protectors that protect Line-Ground, Line-Neutral, and Neutral-Ground in accordance with IEEE / ANSI C62.41.2 guidelines.

Access-Mechanism: The mechanism shall offer toolfree access to the inside of the luminaire.

Bird Guard: Prevents birds from entering the luminaire. Made of high-density polyethylene 0.030" (0.8mm) thick and captive to the housing.

Luminaire Options: (PH8), Photoelectric Cell, Twistlock Type c/w receptacle.

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Miscellaneous

Description of Components:

Wiring: Gauge (#14) TEW/AWM 1015 or 1230 wires, 6" (152mm) minimum exceeding from luminaire.

Hardware: All exposed screws shall be stainless steel with Ceramic primer-seal basecoat to reduce seizing of the parts. All seals and sealing devices are made and/or lined with EPDM and/or silicone.

Finish: Color to be **natural aluminum paint (NP)**. Application of a polyester powder coat paint. (4 mils/100 microns). The chemical composition provides a highly durable UV and salt spray resistant finish in accordance to the ASTM-B117-73 standard and humidity proof in accordance to the ASTM-D2247-68 standard.

Note: Product will come with Step down Autotransformer and aluminum tray designed especially for lighting applications Dimensions A=97mm, B=85mm, C=80mm, D=75mm, E=95mm see next page for detail

Quality Control: The manufacturer must provide a written confirmation of its ISO 9001-2008 International Quality Standards Certification.

Certification: The manufacturer will have to supply a copy of approval products certificate, CSA, UL or CUL.

Vibration Resistance: The GPLM meets the ANSI C136.31-2001 table 2, American National Standard for Roadway Luminaire Vibration specifications for Bridge/overpass applications. (Tested for 3G over 100 000 cycles by an independent lab)

Web site information details: Click on any specific information details you need.

[Paint finish](#) / [Warranties](#) / [Installation pictures](#) / [LED lamp](#) / [Driver Spécification](#) / [ISO Certification](#) / [CUL Certification](#)

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Lamp Technical Information									
Lamps #	Rated life hrs. ¹	LED Manufacturer	CRI	Color Temperature ²	Initial Lumens	Wattage		Max System AC current: 120v	LED mA
						Lamp	System ³		
40W30LED4K	70,000	Philips Lumileds Rebel or Cree XP	70	4000K	3000	40W	45W	0.47A	400mA
40W49LED4K	70,000		70	4000K	3800	42W	47W	0.47A	285mA
60W30LED4K	70,000		70	4000K	4000	60W	66W	0.7A	600mA
65W49LED4K	70,000		70	4000K	5200	65W	72W	0.7A	428mA
90W49LED4K	70,000		70	4000K	6300	90W	102W	1A	571mA
105W79LED4K	70,000	Philips Lumileds Rebel or Cree XP	70	4000K	8200	105W	119W	1.17A	428mA
130W98LED4K	70,000		70	4000K	10400	130W	147W	1.4A	428mA
150W79LED4K	70,000		70	4000K	10300	150W	170W	1.7A	600mA
180W98LED4K	70,000		70	4000K	12600	180W	204W	2A	571mA

¹ Rated life represents the time it takes for the LED system to reach 70% of initial lumen output.

² On average.

³ System wattage includes the lamp and the LED driver.

- How to calculate the lamp lumen per watt ratio: In the above table and according to your choice of lamp, please note the initial lamp lumen value and divide this value by the lamp wattage. (Example: 40W30LED4K : 3000/40=75)

- How to calculate the system lumen per watt ratio (LER): First, visit our website at www.lumec.com and download the IES file (photometric file) of your selected Philips Lumec product. Then, use a photometric software to get the absolute system lumens value and divide by the system wattage. (Example: 40W30LED4K : Absolute system lumens / 45W = LER)

Buy American:

A **manufactured good** is defined as a good brought to the construction site for incorporation into the public building or work that has been processed into a specific form and shape or combined with other materials to create a material that has a different property than the individual raw materials.

There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in a project, as long as the manufacturing occurs in the United States.¹

Recipients of EERE financial assistance funded by the Recovery Act must comply with the requirement in section 1605 that all of the iron, steel, and manufactured goods used for a project for the construction, alteration, maintenance, or repair of a public building or public work be produced in the United States, unless one of the three listed exceptions applies and EERE issues a waiver, or a recipient can legally avail itself of the United States' obligations under international agreements.

Recipients should retain documentation that supports their compliance with the Buy American provisions. During post-award monitoring activities, which may include desk reviews, on-site reviews, audits, and other activities, recipients may be asked to produce records sufficient to verify compliance with the Recovery Act Buy American provisions.

Such documentation could include: (1) language in contractual documents that obligates sub-recipients and/or contractors to comply with the Buy American provisions; (2) receipts for items produced domestically indicating such; (3) a documented certification from the contractor, vendor, distributor, supplier, or manufacturer verifying that the product was manufactured domestically; (4) detailed and verifiable information supporting the claim that the manufactured good has undergone substantial transformation in the United States; and/or (5) other reasonable documentation per the discretion of the state, local, or tribal government financial assistance recipient demonstrating compliance with the Buy American provisions.

Local Government and Tribal Recipients

The Department of Energy's Financial Assistance Rules found at 10 CFR § 600.220, "Standards for financial management systems," Section (b)(2) *Accounting records*, states that "[g]rantees [other than States] and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities..."

For purposes of Buy American documentation, the types of documentation identified in the list above (numbers 1-5) should be sufficient to satisfy the requirements set forth for State, local governments, and tribal recipients in the Financial Assistance Rules. However, States, local governments and tribes are encouraged to consult with their General Counsel's offices, to ensure compliance with the Buy American provisions and 10 CFR § 600.220(a) and (b) more broadly.

OMB Circular A-133

In addition to the procurement documentation guidance provided above, grantees should also be mindful of the standard Federal assistance audit guidance defined in OMB Circular A-133 for state and local governments.

The DOE Acquisition and Financial Assistance Implementation Guide for the American Recovery and Reinvestment Act of 2009 [p. 3-3, section 3.4(1)] states: "Non-Federal entities (States, local governments, tribes and non-profit organizations) are required by the Single Audit Act Amendments of 1996 (Single Audit) and OMB Circular A-133, to have an annual audit of the federal awards (e.g. grant programs)." This requirement generally applies to Non-Federal entities that expend \$500,000 or more in Federal awards in a fiscal year, and stipulates that they shall have a single or program-specific audit conducted for that year, in accordance with the provisions of OMB Circular A-133. Recipients are encouraged to review OMB Circular A-133, Subpart B, Sections 200 through 235 for the audit requirements for Non-Federal assistance recipients. Additionally, recipients should review the Federal Audit Clearinghouse website for instructions on how to appropriately submit Single Audits.

Single Audit Information for Recipients of American Recovery and Reinvestment Act Funds (2 CFR 176 Subpart D and OMB A-133 Compliance Supplement: Appendix VII)

Recovery Act financial assistance recipients subject to OMB Circular A-133 should also closely follow 2 CFR 176.210 (Subpart D) and OMB A-133 Compliance Supplement: Appendix VII, general instructions regarding recipient responsibilities for tracking and documenting sub-recipient expenditures of Recovery Act funds on the Schedule of Expenditures of Federal Awards" (SEFA).

Sub-awards, Sub-recipients and Vendors

The Special Terms and Conditions applicable to Recovery Act funded projects require that the financial assistance recipient flow down the Recovery Act special terms and conditions in any subaward or subcontract.

In 2 C.F.R. § 176.30, the OMB defines the term "sub-award" to include a "legal instrument to provide support for the performance of any portion of the substantive project or program for which the recipient received this award and that the recipient awards to an eligible sub-recipient." A sub-recipient means a "non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a recipient of other Federal awards directly from a Federal awarding agency." (2 C.F.R. § 176.30)

Subcontract is defined as "a legal instrument used by a recipient for procurement of property and services needed to carry out the project or program."

Note that the definition of a "sub-recipient" in 2 C.F.R. § 176.30 specifically excludes "the recipient's procurement of property and services needed to carry out the project or program." This section refers to OMB Circular A-133 to distinguish between a sub-recipient and a vendor. A vendor is defined in OMB Circular A-133 as "a dealer, distributor, merchant, or other seller providing goods

or services that are required for the conduct of a Federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program."

Based on the fact that the Special Terms and Conditions flow down to all subawards and sub-contracts, and the fact that a vendor is not a subawardee, sub-recipient, or subcontractor, the Recovery Act financial assistance recipient and sub-recipients are not required to flow down the Recovery Act's Special Terms and Conditions to vendors. However, financial assistance recipients, sub-recipients and subawardees are ultimately responsible for complying with the Special Terms and Conditions, and should take whatever measures they deem necessary to ensure that the Buy American requirements of the Recovery Act are adhered to by their respective vendors.

CONCLUSION: Please be advised that the Department of Energy cannot answer all questions on a case-by-case basis concerning the appropriate levels of documentation needed to verify compliance with the Recovery Act Buy American provisions. Therefore, financial assistance recipients should consult with their legal counsel in order to ascertain whether they have secured adequate documentation in accordance with the Department of Energy's Financial Assistance Rules found at 10 C.F.R. § 600.220.

To summarize, recipients of EERE Recovery Act financial assistance should take the following steps toward demonstrating compliance with the Buy American provisions:

1. State and local governments and tribes must follow their own procurement policies and procedures, per 10 CFR 600.236, "Procurement", and are expected to maintain maximum oversight over their project and procurement activities with regards to Buy American compliance.
2. Recipients should maintain documentation at a level they feel is appropriate to show compliance with the Recovery Act Buy American provisions.
 - a. A list of recommended documentation is outlined above.
 3. In addition, in order to ensure broader compliance with any potential audit, grantees should (1) determine whether a single audit or program audit is applicable (see OMB Circular A-133), and should then initiate the appropriate audit review process.
 4. Moreover, grantees subject to OMB Circular A-133 should also maintain ongoing compliance with SEFA requirements (2 CFR 176.210 and OMB A-133 Compliance Supplement).

This guidance applies to all state, local and tribal government recipients and sub-recipients (grantees and subgrantees) of Recovery Act financial assistance from the Office of Energy Efficiency and Renewable Energy (EERE).

LEGAL AUTHORITY: Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act; Pub. L. 111-5) sets forth the Buy American provisions for recipients of Recovery Act financial assistance. The Office of Management and Budget (OMB) issued interim final guidance (2 CFR Part 176) for implementing the Buy American provision on April 23, 2009 at 74 Federal Register 18449.

GUIDANCE: Section 1605 of the Recovery Act states, “None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.” The Office of Management and Budget’s (OMB) guidance on implementing this section defines “manufactured good” as a “good brought to the construction site for incorporation into the building or work that has been processed into a specific form and shape; or combined with other raw material to create a material that has different properties than the properties of the individual raw materials.” *See* 2 C.F.R. § 176.140(a)(1).

The OMB guidelines further define a “domestic manufactured good” as “a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.” *See* 2

C.F.R. § 176.160(a). We interpret, “Produced in the United States,” to mean that the production or manufacturing facility is physically located in the United States or its territories. The domicile of the parent company, subsidiary, distributor, or supplier is not relevant for determining compliance with the Recovery Act Buy American provision.

Substantial transformation has long been applied in judicial and administrative customs cases on labeling, national origin, and other Federal statutory requirements as the appropriate and effective way to identify where a good was manufactured. The courts have determined what constitutes substantial transformation on a case-by-case basis. The Environmental Protection Agency (EPA) has issued guidance for its Recovery Act projects interpreting the substantial transformation test found at *Complying with ARRA Buy American Provisions for SRF-Funded Projects*, June 22, 2009 www.epa.gov/water/eparecovery. The following questions provided therein may be helpful to determine whether or not substantial transformation has occurred. It is likely that substantial transformation has occurred in the U.S. if the answer is “yes” to either (or a combination of) Question 1, 2, or 3 below:

1. Were all of the components of the manufactured good manufactured in the U.S., and were all of the components assembled into the final production in the U.S.? (If the answer is yes, then it is clearly manufactured in the U.S., and the inquiry is complete.)
2. Was there a change in character for use of the good or the components in the U.S.? (These questions are asked about the finished good as a whole, not about each individual component.)
 - a. Was there a change in the physical and/or chemical properties or characteristics designed to alter the functionality of the good?
 - b. Did the manufacturing or processing operation result in a change of a product(s) with one use into a product with a different use?
 - c. Did the manufacturing or processing operation result in the narrowing of the range of possible uses of a multi-use product?

If the answer is yes to any of 2a, 2b, or 2c, then the answer to Q.2 is yes.

3. Was/were the processe(es) performed in the U.S. (including but not limited to assembly) complex and meaningful?

- a. Did the process(es) take a substantial amount of time?
- b. Was/were the process(es) costly?
- c. Did the process(es) require a number of different operations?
- d. Did the processes require particular high level skills?
- e. Was substantial value added in the process(es)?

If the answer is yes to at least two of 3a, 3b, 3c, 3d, or 3e, then the answer to Q.3 is yes.

These questions all focus on manufacturing, processing, assembly, or integration of the components or subcomponents into a finished good. Design, planning, procurement, component production, or any other step prior to the process of physically bringing together the components into the item used in and incorporated into the Recovery Act project cannot constitute part of substantial transformation.

If the parts at issue are components (or subcomponents) of a larger manufactured good that is domestically manufactured, or substantially transformed, in the United States, then the Buy American Recovery Act requirement does not apply.

The responsibility for determining whether the parts are components of a larger manufactured good, and whether the good is manufactured in the United States rests with the Recovery Act financial assistance recipient. Recipients should consult with their own legal counsel concerning the basis for substantial transformation. Based on the requirements of the Recovery Act and OMB's guidance on the Recovery Act, **DOE cannot approve or disapprove a Recovery Act recipient's determination that a manufactured good has been substantially transformed in the United States. However, DOE Contracting Officers may request additional information to support the credibility of the recipient's analysis of substantial transformation. It is the recipient's responsibility to ensure that all information and documentation that supports a substantial transformation determination is accurate and complete and is retained for audit purposes.** If recipients have reasonable doubt about the substantial transformation of a given manufactured good, and they believe that one of the exceptions outlined in the Recovery Act apply (such as domestic "nonavailability"), then the recipient may apply for a waiver based on that exception.

What is a "manufactured good?"

A: According to the regulations published by OMB in 2 CFR 176, a manufactured good is a good brought to the construction site for incorporation into the building or work that has been processed into a specific form and shape; or combined with another raw material to create a material that has different properties than the properties of the individual raw materials. There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in a project, as long as the manufacturing occurs in the United States. The OMB Interim Final Guidance requires that the manufactured good be physically incorporated as into the project.

For example, a crane used to lift items on a construction site would not be considered a manufactured good covered by the Buy American provisions because the crane is not

incorporated into the building or public work. Similarly, an energy efficient desktop computer monitor does not become a permanent fixture of the building, and therefore is not "incorporated into" the building. As a result, the monitor does not fit the definition of a "manufactured good" and is not covered by the Buy American provisions.

By contrast, a "smart" thermostat that is brought to the site for incorporation into a building would be covered by the Buy American provisions. The individual parts that go into that meter, however, would be considered components or subcomponents and would not be subject to the Buy American provisions.

Q: What are the Recovery Act Buy American provisions?

A: The Buy American provisions direct that, subject to certain exceptions, no Recovery Act funds may be used for a project for the construction, alteration, maintenance or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced or manufactured in the United States.

Q: What is a substantial transformation?

A: Substantial transformation is a term used in the definition of a "domestic manufactured good" in the OMB Interim Final Guidance published at 2 CFR 176. In order for a good to be considered produced or manufactured in the United States, it must undergo a substantial transformation in this country. EERE has recently published guidance to assist grantees in making these substantial transformation determinations. Read the complete guidance ([PDF 122 KB](#)).

The factors involved in determining whether substantial transformation has occurred focus on manufacturing, processing, assembly, or integration of the components or subcomponents into a finished good. Design, planning, procurement, component production, or any other step prior to the process of physically bringing together the components into the final manufactured good used in (and incorporated into) the Recovery Act project cannot constitute part of the substantial transformation determination

EERE has published a "Nonavailability Waiver Request Template" on the Buy American webpage. Please fill out the required information in a thorough and complete manner. All waiver requests should be coordinated with your project officer, and submitted as an email attachment to BuyAmerican@ee.doe.gov.

Q: What is the process for issuing domestic nonavailability waivers?

A: Once a waiver request is submitted, the EERE Buy American team initiates a formal consultation process with the National Institute of Standards and Technology's Manufacturing Extension Partnership (MEP). MEP has 59 affiliated centers nationwide with substantial knowledge of American domestic manufacturing capabilities. MEP uses its network of centers to "scout" for manufacturers and potential manufacturers of the product identified in the waiver request. EERE also contacts manufacturing trade associations and conducts independent research to determine whether a product is manufactured in the United States. EERE aims to complete this scouting process and issue a waiver determination approximately 4 weeks after receiving a waiver request.

Q: Has EERE already issued any nonavailability waivers?

A: Yes. The waivers are published in the Federal Register and on the [EERE Buy American Web site](#).

As of June 18, 2010, EERE has issued the following waivers:

- Feb 11, 2020
 - LED traffic lights, arrows, and crosswalk signals
 - Florescent electronic lighting ballasts
 - Screw-base and in-base compact fluorescent lamps (CFLs)
- May 24, 2010
 - Non-residential programmable thermostats
 - Commercial scale fully-automatic wood pellet boiler systems
 - Facility and small district wood pellet and chip boiler furnaces
 - Variable refrigerant flow zoning and inverter-driven ductless mini-split HVAC systems
 - Electrical "smart" strips/surge protectors
 - Gas or propane tankless water heaters up to 200,000 BTUs
 - Fully-enclosed continuous composting systems.

Q: A grantee is not sure if a product was made in America. What should the grantee do to verify the manufacturing origins?

A: Grantees should contact the product's manufacturer, distributors, and suppliers to determine the country of origin. In addition, trade associations may be a good source of information. EERE has published guidance on documenting compliance with the Recovery Act Buy American provisions ([PDF 136 KB](#)).

Q: Do I need to track the country of origin of every screw, bolt, wire, switch and other small piece of construction equipment used in our project?

A: No. EERE has issued a waiver for incidental items that comprise in total a *de minimis* amount of the total cost of the iron, steel, and manufactured goods used in a project; that is, any such incidental items up to a limit of no more than 5% of the total cost of the iron, steel, and manufactured goods used in and incorporated into a project.

This means that recipients do not need to substantiate a domestic origin for the bottom 5% (based on cost) of incidental manufactured goods in each project.

City of Madison EECBG Project Contractor Guidance Document

As a contractor for an EECBG project, there are certain requirements and specifications that must be met under the Davis Bacon Act, Buy American (as it relates to the Recovery Act), as well as those that are a part of our overall EECBG Plan.

The City will be required to make job site visits and retain certain documentation. The information below will explain these new criteria with specific details to each.

ENERGY GRANT CHECKLIST

ACTION ITEMS:

DAVIS BACON

WEEKLY PAYROLL-As a contractor for this project, you will be required to send a copy of the project payroll and WH 347 Report on weekly basis with the required information included. The following site has forms that you may download and use that already contain the required information. www.dol.gov/whd/forms/index.htm.

During the course of the project you will need to forward a weekly copy completed to:

Attn: Cody Wright, City of Madison, 100 Hughes Rd, Madison, AL 35758

ONSITE SIGNAGE- At each job site you will need to provide employee access to Davis Bacon Act information. This can be a sign at the job site or simply kept in a notebook in the job site foreman's vehicle. All employees must have access to the information. The following link provides a copy of the sign that you may print out for your use.

www.dol.gov/whd/regs/compliance/posters/davis.htm. **The following link is a poster that includes Davis Bacon information as well as Notice of Employee Rights, Notice to Employees Working on Government Contracts, Employee Rights for Workers with Disabilities/Special Minimum Wages that can be purchased** http://www.postercompliance.com/products/federal-labor-law-posters_federal-contractor-poster.html ***All signage must be in English and Spanish***

ONSITE EMPLOYEE WAGE INTERVIEW- The following site can be used to ensure you are using the correct job classification and wage rate for each worker on site. www.wdol.gov

At each job site the City, as recommended by our guidelines, will be conducting employee interviews, at least one employee interview per contractor.

BUY AMERICAN

CONTRACTOR CONFIRMATION-You will be required to provide the City copies of the product(s) Buy American Documentation including a letter signed by the contractor listing all product components, stating that each qualify as American made, as well as product photos, specs, etc to attest to the product(s) Buy American qualification. All materials including signed letter can be sent to:

Attn: Cody Wright, City of Madison, 100 Hughes Rd, Madison, AL 35758

COMPLETE THE CIRCLE

LED project-Any lighting removed will be returned to Cody Wright or his representative at a location specified by him.

For more information regarding the Davis Bacon Act, the following links is provided:

http://www.gc.energy.gov/documents/DOE_DBA_Desk_Guide.pdf -Davis Bacon Act

Davis Bacon Act:

Contract Clauses

On projects where DBA prevailing wage requirements must be paid, the requirements set out in the DOL regulations at 29 CFR Parts 1, 3, and 5 are applicable. In accordance with 29 CFR Part 1, Federal agencies directly contracting for projects or providing assistance under the Recovery Act to other entities for such projects **must include the DBA contract clauses in their solicitations, assistance agreements, and the resulting contracts and grants, and must require that those requirements flow down to any contracts or subcontracts for the performance of the work.**¹⁰ As a consequence of the required DBA contract clauses, the recipient of the Recovery Act funds is responsible for the compliance by its subgrantees, contractors, and their subcontractors.

EECBG Program projects using Recovery Act funds must incorporate the most current DOL Wage Determination(s) as found at <http://www.wdol.gov/Index.aspx> for the worker classifications applicable to the work being performed by employees or contractors. Please also note that the rates posted at the DOL site are minimums.

Grantees/subgrantees and contractors must attach the applicable wage determinations to the solicitation, assistance agreement, and resulting contract or grant. *A grantee or subgrantee and contractors/subcontractors contracting out work on a covered project must also attach the applicable wage determination(s) to the solicitation and resulting contract or grant.*

If an ongoing construction project that was awarded prior to the Recovery Act or that was not assisted or funded in whole or part by Recovery Act funds later receives Recovery Act funding, the agency will insert the appropriate wage determination(s) in relevant contracts and federal assistance agreements effective as of the date the Recovery Act funding is approved for use on the project. The wage determinations must thereafter be included in any contracts or subcontracts for the DBA-covered work. Projects that are already subject to the DBA labor standards would not require application of a new Davis-Bacon wage determination upon receipt of Recovery Act funding unless the funding is for work not contemplated under the existing contract for construction.

Payroll Records

In addition, Grantees/subgrantees and contractors/subcontractors on these projects funded or assisted in whole or part by Recovery Act funds shall maintain payrolls and basic records relating to payroll during the course of the work and preserve them for a period of three years thereafter for all laborers and mechanics working on the project, or as designated in the grant document.¹² **They must also ensure that all laborers and mechanics on a project funded or assisted in whole or part with Recovery Act funds are paid on a weekly basis and must submit weekly certified payroll records to the contracting and administering agency.**¹³

Published Wage Rates

Wage rates can be found at www.wdol.gov. If county recipients in any State do not have published DOL wage rates, then the county must submit a request for conformance to the DOL. The conformance process often takes up to six weeks to be completed so county should plan its project activities accordingly.¹⁴

Administrative Costs

Costs associated with DBA compliance can be charged as an administrative cost. EECBG recipients should contact their respective DOE Project Management Center for specific guidance on how to appropriately charge these costs.

When visiting the sites should we verify the posting of the Davis-Bacon materials on the work site?
What if the work site is simply an A/C or lighting install?

Answer: When making a site visit do verify the posting of the DBA required poster and the wage determination. If it is an installation, the contractor may have the information in the company truck. If the poster is in the truck, verify the employees have seen the poster and the wage determination. Contractors may provide each employee with a copy when they begin a job and then maintain one in the company truck

So if government agency obtains a grant, then does the agency need to do anything specific for compliance with DBA requirements other than obtaining Certified Payroll from the contractors and does routine random check of the employees of contractor for compliance, etc.?

Answer: The local state government agency that receives an SEP or EECBG program grant must make sure that the Davis-Bacon Act clauses are incorporated into the contracts with the appropriate wage determination for the work that is to be performed. Once the work begins, the contractor will submit the certified payrolls to the local state agency and that agency must make sure that the wages have been paid properly. The local state agency is required to assure that all supporting documentation is submitted by the contractor for fringe benefits or for apprenticeship/trainees. Additionally, the local state agency is expected to perform some site inspections and employee interviews. If the certified payrolls contain mistakes, it is the responsibility of the local state agency to notify the contractors and have the corrections made and any back wages paid to the workers, if necessary. You can find additional information on the EECBG/SEP FAQ website:
http://www1.eere.energy.gov/eere_faq/default.aspx?pid=10&spid=1.

ORDINANCE NO. 2008-289

AN ORDINANCE OF THE CITY OF MADISON RELATING TO NOISE CONTROL; SPECIFYING THAT CERTAIN TYPES LEVELS OF NOISE ARE NOT PERMITTED DURING CERTAIN DAYS AND HOURS; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MADISON AS FOLLOWS:

Section 1. Section 12-5 of the Madison Code of Ordinances is hereby repealed, and in lieu and substitution thereof is adopted the following Section 12-5, with subsections.

Sec. 12-5. Noise—Prohibitions.

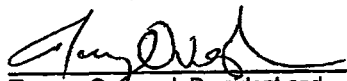
- (a) It shall be unlawful for any person to make, continue, or cause to be made or continued any noise of such character, intensity, volume or duration so as to disturb, frighten, or injure the comfort, peace, safety, health, or life of persons within the city. The following acts, among others, are declared to be nuisance noises in violation of this Code, but such enumeration shall not be deemed to be exclusive:
- (1) *Horns, signaling devices, etc.* The unnecessary or excessive sounding of any horn or signaling device on any automobile, bus, truck, motorcycle or other vehicle on any street, public place or on private property within the city, except as a signal of warning or danger; the sounding of any such device for an unnecessary or unreasonable length of time; the production by means of any such device of any unreasonably loud or harsh sound.
 - (2) *Radios, phonographs, tape players, musical instruments, etc.* The playing of any radio, phonograph, tape player, musical instrument, amplifier, loudspeakers or other device used for the production or reproduction of sound in such a manner or with such volume as to disturb the peace, quiet or comfort of any neighboring inhabitants.
 - (3) *Animals or birds.* The keeping of any bird or animal, especially a dog, which, by causing frequent or continued noise shall disturb the peace, quiet or comfort of any neighboring inhabitants.
 - (4) *Whistles, etc.* The blowing of any locomotive whistle or whistle attached to any stationary boiler, or any gong or bell attached to any building, except as a signal of warning or danger or to give notice of time to begin or stop work or upon the request of proper authorities.
 - (5) *Devices operated by compressed air.* The use of any mechanical device operated by compressed air, unless the noise created thereby is effectively muffled or reduced.
 - (6) *Exhaust.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor vehicle, motorboat or aircraft except through a muffler or other device which will effectively prevent loud or explosive noises therefrom. If any such steam engine, internal combustion engine, motor vehicle, motorboat or aircraft is equipped with a nondefective muffler or noise suppression device as originally installed or specified by the manufacturer, the discharge of exhaust shall be presumed not to violate this section.

- (7) *Defective vehicles or loads.* The use of any motor vehicle so out of repair or loaded in such a manner as to create loud or unnecessary grating, grinding, rattling or other noise.
- (8) *Loading or unloading, etc.* The creation of a loud and excessive noise in connection with the loading, unloading or unpacking of any vehicle or the opening and destruction of bales, boxes, crates and containers, where such noise is a nuisance to nearby residences.
- (9) *Noises near schools, libraries or hospitals.* The creation of any excessive noise on any street or property adjacent to any school, institution of learning or library, while in use, or any hospital or sanitarium providing there are conspicuous signs indicating the location of the school, library or hospital.
- (10) *Peddling, flea markets.* The shouting and crying of peddlers and vendors or the creation of excessive noise at a flea market which disturbs the peace, quiet and comfort of the neighborhood.
- (11) *Participation in noisy parties or gatherings.* The congregation of persons at and participation in any party or gathering from which noise emanates of a sufficient volume or of such nature so as to disturb the peace, quiet and comfort of any neighboring inhabitants. A police officer may, if such officer deems it appropriate, order all persons present other than the owners or tenants of the property from which the noise emanates to immediately disperse, and may, after issuance of a warrant, arrest any persons present who refuse to disperse.
- (12) *Discharge of firearms.* Subject to the provisions of this section, it shall be unlawful for any person to fire, discharge or shoot within the city any gun, rifle, shotgun, pistol or other similar firearms on or within 500 feet of a residence, business or other inhabited building or private or public property not the property of the person, except as shooting galleries or ranges legally established, in the discharge of duty by law enforcement officers, pursuant to lawful direction of law enforcement officers, or in lawful defense of person or property from felonious attack. A person may discharge firearms on such person's own property within 500 feet of a residence, business or other private or public property not such person's property where it is essential for the purpose of disposing of or destroying certain destructive animals, fowl, birds, reptiles or insects that are a menace to public health and have become a nuisance upon the person's premises.
- (13) *Sound amplification system.* The operation of any radio, tape player, compact disc player, loudspeaker or other electronic device used for the amplification of sound such that the audible sound therefrom is discernible by the human ear at or within the property boundary of any adjoining or nearby residential premises between the hours of 10:00 p.m. and 7:00 a.m.
- (14) *Construction noise.* Noise extending beyond the property line that is generated by any construction-related activity, except between the hours of 7:00 a.m. and 9:00 p.m. on weekdays (including Saturdays), and between 10:00 a.m. and 7:00 p.m. on Sunday and the following legal holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving, and Christmas. Provided, however, that operation of construction equipment at any hour is permitted as long as it does not produce noise beyond the property line that exceeds the maximum sound levels specified in section 12-6, Madison Code of Ordinances, and further provided that all equipment used is equipped with a properly installed muffler in good working order.

- (15) *Noise from street sweepers, service vehicles, delivery trucks and similar.* The operation on commercial property of any dumpster-moving equipment, street sweepers, delivery trucks or similar equipment that is audible in a residential district shall not be allowed during the following hours: 10 p.m. until 7 a.m. on weekdays, including Saturday, and 7 p.m. to 10 a.m. on Sunday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and Christmas Day.
- (b) This section shall not apply to organized or community events held for historic or charitable purposes, or entertainment events held on private property.
- (c) The following uses and activities shall be exempt from noise level regulations:
- (1) Noises of safety signals, warning devices and emergency pressure relief valves.
 - (2) Noises resulting from any authorized emergency vehicle, when responding to an emergency call or acting in the time of an emergency.
 - (3) Any other noise resulting from activities of temporary duration permitted by law and for which a license or permit has been granted by the city in accordance with its ordinances and laws, except as specifically enumerated in subsection (a) above.

Section 2. Effective Date. This Ordinance shall become effective upon adoption and publication as required by law.

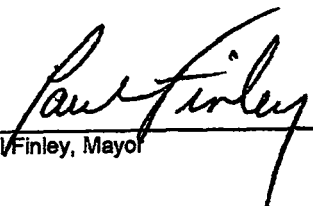
READ, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Madison, Alabama, on this the 24th day of November, 2008.


Tommy Overcash President and
Presiding Officer of the City Council of
the City of Madison

ATTEST:


Melanie A. Willard, CMC
City Clerk - Treasurer

APPROVED this 24th day of November, 2008.


Paul Finley, Mayor

SECTION 16.0
“NO BID” RESPONSE FORM
(Return of this form indicates a “No BID” Response)
COM-15-11

CITY OF MADISON LED STREET LIGHTS PROJECT

Vendor should return the **“No Bid” Response Form for a “no bid.”** It is required that a **“No Bid” response be identified on the envelope** as if it were a bid (example: **“No Bid” for Bid #COM-15-11**). A properly submitted No Bid response is considered as a response and the vendor will receive credit for the response. Vendors who fail to respond to three (3) consecutive Invitations to Bid shall be removed from the Vendor List. **Faxes and emails of “No Bid” Response Form are not acceptable.**

Date:		
BID Number:		
BID Name:		
Company Name:		
Company Address:		
City, State, ZIP		
Contact Name:		
Telephone Number:		
Fax Number:		
Reason for “No BID” Response:		
Would you like to remain on our active list?	Yes	No
Signature:	Date:	